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on printed arg. on
behalf of appellant
Mr. Justice Catron

SUPREME COURT OF THE UNITED STATES.

No. ~~247~~ 135.

RICHARD PINDELL, APPELLANT,

vs.

NAPOLEON B. MULLIKIN AND AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

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5th Cir Cases - See
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A Kerr.

SUPREME COURT OF THE UNITED STATES.

No. 217.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

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MISSOURI DISTRICTS, *sct.*

Pleas before the Hon. Robt. W. Wells, district judge of the United States for the Western district of Missouri, and the Hon. Samuel Treat, district judge of the United States for the Eastern district of Missouri, judges of the circuit court of the United States for the eighth circuit and districts of Missouri, at St. Louis, Missouri, on the 23d day of October, 1858.

RICHARD PINDELL, Compl't,
ag'st
NAPOLEON B. MULLIKIN, &c., Def'ts. } In Chancery.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of January, A. D. eighteen hundred and fifty-seven, come the complainant in the above-entitled cause, by his attorney, and files in the office of the clerk of the circuit court of the United States for the districts of Missouri, his bill in chancery against the aforesaid defendants, which bill is in the words and figures following, to wit:

Bill in Chancery.

Circuit Court of the United States for the district of Missouri—April Term, 1857.

RICHARD PINDELL, Compl't,
vs.
NAPOLEON B. MULLIKIN and al., Def'ts.

Richard Pindell, of Kentucky, and a citizen of the State of Kentucky, brings this his bill against Napoleon B. Mullikin, Jerome B. Mullikin, Charles B. Wiggins, and Virginia J., his wife, Sidney S. Jerman, and Octavia E., his wife, John R. Shepley, William H. McPherson, P. Dexter Tiffany, Samuel Willi, James Clements, jr., and David H. Armstrong, all residents of Missouri, and citizens of the State of Missouri.

And thereupon your orator complains and says, that in the earlier part of the year 1818, one John Sloan purchased from David Musick fifty arpens of land, to be taken out of either of three tracts of land in the county of St. Louis, containing, in the aggregate, fourteen hundred and thirty-two arpens, at that time claimed by said Musick, and the same fully described in a deed subsequently made by said Musick and wife to Robert Duncan, and hereinafter referred to and made part of this bill; that at the time of said purchase, a deed was duly executed for said land by said Musick to said Sloan, and the consideration fully paid; that immediately thereafter said Sloan went from the city of St. Louis to the

city of Natchez, where he afterwards died, probably in the winter of 1818, leaving a widow and two infant children, living in the town of Lexington, Kentucky, where they continued to reside until within the last three years; that they were apprized of the fact that their father had purchased said fifty arpens of land, but after long and repeated searches and examinations, have been unable to find the deed for same, and your orator now charges that it has been lost, mislaid, or destroyed, so that neither the original nor a copy can now be produced to file with this petition.

That afterwards, to wit, on the 19th day of January, 1820, said David Musick and wife sold and conveyed to Robert Duncan one-third of said fourteen hundred and thirty arpens of land, after deducting said fifty arpens, by deed duly recorded in St. Louis county, containing the following provision:

"And whereas I, the said David Musick, did, prior to this day, sold and conveyed fifty arpens of the above premises with the consent and knowledge of him, the said Robert Duncan; therefore, it is covenanted and agreed upon before the signing and delivery hereof, that the said fifty arpens shall be deducted or reserved out of the aforesaid quantity of fourteen hundred and thirty-two arpens, or any of the tracts within mentioned, and that the said Robert Duncan is to have the one equal undivided third part of the remaining quantity, to wit, the one equal undivided third of thirteen hundred and eighty-two arpens, more or less, in manner and form aforesaid;" as will more fully appear from a copy of said deed herewith filed as part of this bill, marked A.

That the said fifty so referred to in said deed as having been, prior thereto, "sold and conveyed," was the same hereinbefore charged to have been purchased by, and conveyed to, John Sloan, and said sale is the one therein referred to; that all the said land described in said deed from David Musick to Robert Duncan, except the first-mentioned tract of seven arpens front by forty in the rear, situated in that part of the *prairy,* near the town of St. Louis, called Cul-de-sac, has been lost to the said Musick and his grantees by superior and prevailing adverse titles, and that said tract of seven front by forty in the rear continues to be held and enjoyed by the grantees of the said David Musick; that the fifty arpens so purchased by said John Sloan was to have allotted to him out of this tract; that all the grantees of said Musick, and those claiming under them, had notice of the said title of John Sloan at the time of their respective purchases; that after the said conveyance by Musick to Duncan, he, Musick, sold and conveyed to other parties the remaining two-thirds of all said tracts of land; that in the year 1838, such proceedings were had in the circuit court for St. Louis county, on the application of said Robert Duncan against the claimants of the other two-thirds of said tract of two hundred and eighty arpens, as resulted in a division and allotment of said tract

to the respective claimants; that on the 14th day of April, 1831, the said David Musick and wife sold and conveyed to Charles Mullikin, by deed duly recorded in St. Louis county, all their right, title, interest, and claim, and property in and to the said fifty arpens of land so described as aforesaid, in the said deed to Robert Duncan, as fully appears from a copy of said deed here filed as part of this bill, and marked Exhibit B.

Your orator charges that, by said deed, no title passed to said Mullikin, the same having been vested in said John Sloan by said deed from Musick to him; that said Mullikin was made a party to said proceedings for a division of said tract, and under and by virtue of said conveyance nine arpens and $\frac{81}{100}$ was allotted to him, as fully appears from the same; that the rights of your orator are in no manner prejudiced by said division; that the widow said John Sloan and one of his children are dead, leaving as his only heir J. R. Sloan, who did not become twenty-one years of age until the year 1834; that said J. R. Sloan has sold and conveyed said fifty arpens of land to your orator for a valuable consideration, as will fully appear from a copy of said deed duly recorded in St. Louis county, and filed herewith, marked Exhibit C.

That your orator is entitled to his said fifty arpens of land out of that part of said tract allotted in said division to the said Robert Duncan and those claiming under him. That said Duncan has departed this life, but has sold and conveyed the land allotted to him in said division to the following persons, who now claim title to their respective interests by virtue of deeds from said Duncan and under said division, all of whom are made defendants to this bill, to wit: John R. Shepley, William H. McPherson, P. Dexter Tiffany, Samuel Willi, James Clements, jr., and David H. Armstrong.

That said Charles Mullikin has departed this life, leaving the following persons his heirs, who are made defendants to this bill, to wit: Napoleon B. Mullikin, Jerome B. Mullikin, Virginia J. Mullikin, who has intermarried with Charles B. Wiggins, and Octavia E. Mullikin, who has intermarried with Sidney S. Jerman. The said Charles B. Wiggins and Sidney S. Jerman are also prayed to be made defendants to this bill, and who are now claimants of the said nine arpens and $\frac{81}{100}$ alloted as aforesaid to the said Charles Mullikin.

Your orator prays that the said fifty arpens of land may be allotted to him out of the said one-third part of said two hundred and eighty arpens of land, set apart in said division to Robert Duncan and those claiming under him. He is willing to receive as part of the same the said nine arpens and $\frac{81}{100}$ allotted to Charles Mullikin. He prays that the said conveyance from David Musick and wife to Charles Mullikin may be cancelled and held for nought, and the possession of said land delivered to him, and that if relief

is denied him for the full amount of fifty arpens, as herein prayed, that he may be decreed the said nine arpens and $\frac{81}{100}$ so allotted to Charles Mullikin.

He prays for process against said defendants and for such general and full relief as he may be entitled to in equity, &c.

R. PINDELL.

Order for Subpœna.

And afterwards, in variation of our said circuit court for the districts of Missouri, on January 29th, A. D. 1857, the following proceedings took place in this cause, to wit:

RICHARD PINDELL, Compl't, agst. NAPOLEON B. MULLIKIN et al., Defd'ts. } In Chancery.

This day comes the complainant, by A. Buckner, his solicitor, and on his motion a subpœna in chancery is awarded against the defendants in this cause upon the bill this day filed, said subpœna returnable to the first Monday in April next; which said subpœna in chancery is in the words and figures following, to wit:

Subpœna in Chancery.

MISSOURI DISTRICT, *set.*

The President of the United States to Napoleon B. Mullikin, Jerome B. Mullikin, Charles B. Wiggins and Virginia J. his wife, Sidney S. Jerman and Octavia E. his wife, John R. Shepley, Wm. H. McPherson, P. Dexter Tiffany, James Clements, jr., Samuel Willi, and David Armstrong, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Missouri, on the first Monday of April next, at the city of St. Louis, then and there to answer the bill of complaint of Richard Pindell, a citizen of the State of Kentucky, filed against you on the 29th day of January, 1857; thereof fail not.

Witness the Honorable Roger B. Taney, Chief Justice of the [L. S.] United States, the 29th day of January, 1857.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

BEN. F. HICKMAN, *Clerk.*

Memo. The defendants to enter their appearance in this suit in the clerk's office, on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN, *Clerk.*

Marshal's Return.

Upon which subpœna in chancery the marshal made the following return:

I hereby certify that I served the within writ on James Clements, jr., and David R. Armstrong, on the 29th day of January, 1857, at St. Louis, Mo., by reading the same to them and within their hearing, and by delivering to each of them a copy of the within writ; and I further certify, that I served the within writ on Napoleon B. Mullikin on the 30th day of January, 1857, at St. Louis, Mo., by reading the same to him and within his hearing, and by delivering him a copy of said writ, together with the copy of the declaration thereto attached. I also certify, that I served the within writ on Jerome B. Mullikin, in the county of St. Louis, and on John R. Shepley and P. Dexter Tiffany, at St. Louis, Mo., on the 30th day of January, 1857, by reading the same to them and within their hearing, and by delivering to each of them a copy of said writ.

I further certify, that I served the within writ on Charles B. Wiggins and Virginia J. Wiggins his wife, and on Sidney S. Jerman and Octavia E. Jerman his wife, in the county of St. Louis, Mo., on the 30th day of January, 1857, by leaving a copy of the writ at their usual place of residence, with a white person over fifteen years of age and a member of their family, being the overseer and in charge of their residence.

I further certify that I served the within writ oh Samuel Willi on the 31st day of January, 1857, in the city of St. Louis, Mo., by reading the same to him and within his hearing, and by delivering to him *of* copy of the writ.

THOMAS S. BRYANT,
U. S. Marshal Missouri District.
By J. H. DOUGLASS, *Deputy.*

Demurrer to Bill.

And afterwards, at the April term of our said circuit court for the districts of Missouri, on Monday, April 6th, A. D. 1857, the following proceedings took place in this cause, to wit:

RICHARD PINDELL, Compl't,
ag'st
NAPOLEON B. MULLIKIN et al., Def'ts. } In Chancery.

The day come the defendants by their solicitors and file a demurrer to the bill of complainants heretofore filed herein, which said demurrer is in the words and figures following, to wit:

In the Circuit Court of the United States for Missouri district.

RICHARD PINDELL
ag'st
NAPOLEON B. MULLIKIN and others.

DISTRICT OF MISSOURI, *ss.*

The defendants, Napoleon B. Mullikin, Jerome B. Mullikin,

Charles B. Wiggins and Virginia J. his wife, Sidney S. Jerman and Octavia E. his wife, John R. Shepley, William M. McPherson, P. Dexter Tiffany, Samuel Willi, James Clemens, jr., and David H. Armstrong, defendants, by protestation not confessing or acknowledging any of the matters and things in said bill contained to be true, do demur to said bill, and for cause of demurrer say, that said complainant has not by his bill made such a case as entitles him to any discovery or relief against these defendants or any of them.

And for further cause of demurrer they say, that by complainant's own showing the parties who purchased and to whom said David Musick conveyed the other two-thirds of said tract in said bill described, (the one-third having been conveyed to Robert Duncan,) are necessary parties to this bill if there be any equity in said bill or against any one.

And for a further cause of demurrer said defendants say, that said bill upon its face shows such laches on the part of complainants and those under whom he claims, that this court will afford him no relief.

Wherefore, and for divers other good causes of demurrer appearing on said bill of complaint, these defendants do demur to said bill and to all the matters and things therein contained, and pray the judgment of this court whether they shall make any further or other answer to said bill, and they humbly pray to be hence dismissed with reasonable cost, in this behalf sustained.

R. M. FIELD,
J. R. SHEPLEY,
Solicitors.

I certify that in my opinion the above demurrer is well founded in point of law.

J. R. SHEPLEY, *Solicitor for Def'ts.*

STATE OF MISSOURI,
County of St. Louis, ss.

Napoleon Mullikin, being duly sworn, on his oath states, that the foregoing demurrer is not interposed for delay.

N. MULLIKIN.

Sworn to and subscribed before me this 14th day of March, 1857.

BEN. F. HICKMAN, *C'lk.*

Order sustaining Demurrer as to some of the Defendants.

And afterwards, at the same term of our said circuit court for the districts of Missouri, on Thursday, April 23d, A. D. 1857, the following proceedings took place in this cause, to wit:

RICHARD PINDELL, Compl't,
ag'st
N. B. MULLIKIN et al., Def'ts. } In Chancery.

This day come again the parties, by their solicitors, and the court having heard and being advised of and concerning the questions of law arising upon the demurrer filed herein, is of opinion that the same are for the defendants, John R Shepley, Wm. M. McPherson, P. Dexter Tiffany, Samuel Willi, James Clemens, jr., and David H. Armstrong, and now orders and directs that the said demurrer be sustained as to said above named defendants; and further orders and decrees that the complainant's bill as to said above named defendants be, and the same is hereby, dismissed at the costs of said complainants, and as to the questions of law arising upon said demurrer as to all other defendants named in said bill, the court is of opinion that the same are for complainant, and accordingly orders and directs that said demurrer as to them be, and the same is hereby, overruled, and on motion of the solicitor for the complainant, leave is given him to file an amended bill herein.

Answer to Bill.

And afterwards, at the October term of our said circuit court for the districts of Missouri, on Tuesday, October 6, 1857, the following proceedings took place in this cause, to wit:

RICHARD PINDELL, Compl't,
ag'st
NAPOLEON B. MULLIKIN, &c., Def'd'ts. } In Chancery.

This day come the defendants, Napoleon B. Mullikin, J. B. Mullikin, Wiggins and wife, and Jerman and wife, and file their answer to bill of complainants in this cause, which said answer is in the words and figures following, to wit:

In the Circuit Court of the United States for the district of Missouri.

RICHARD PINDELL
vs.
NAPOLEON MULLIKIN, JEROME B. MULLIKIN, CHARLES WIGGINS and VIRGINIA J. WIGGINS, his wife, SIDNEY S. JERMAN and OCTAVIA E. JERMAN, his wife.

COUNTY OF ST. LOUIS, *ss.*

The joint and separate answer of the said defendants, Napoleon Mullikin, Jerome B. Mullikin, Charles Wiggins and Virginia J. Wiggins, his wife, Sidney S. Jerman and Octavia E. Jerman, his wife.

These defendants, expressly reserving to themselves all and all manner of benefit of exception to the manifold errors, uncertain-

ties, and imperfections in said bill of complainant contained, for answer thereto, or to so much thereof as they are advised it is necessary or material for them to make answer thereto, answer and say, that they deny that in the early part of the year eighteen hundred and eighteen, or at any other time, John Sloan purchased from David Musick fifty arpents of land, to be taken out of either of three tracts of land in the county of St. Louis, containing in the aggregate fourteen hundred and thirty-two arpents, at the time owned by Musick, described in the deed from said Musick to Robert Duncan, referred to in said bill of complaint; or that then or at any other time a deed was executed by said Musick to said John Sloan for said fifty arpents thus alleged to be purchased, or that the consideration therefor was fully paid by said Sloan.

These defendants, further answering, state that they have been informed, and believe it to be true, that on 19th day of January, eighteen hundred and twenty, David Musick and wife did sell and convey to Robert Duncan one-third of fourteen hundred and thirty arpents of land therein described, and that said deed contains in it some provision similar in its general terms to that set forth in said bill of complaint; but these defendants, for greater certainty therein, crave leave to refer to said deed when the same shall be produced by complainant.

Defendants, further answering, deny that the fifty arpents in said deed mentioned was ever purchased by and conveyed to John Sloan, or that any sale and conveyance to Sloan was thereby referred to; but your defendants admit that on the fourteenth day of April, 1831, the said David Musick and wife sold and conveyed to said Charles Mullikin, by deed of that date, the said fifty arpents of land, described as being reserved in said deed, or so much of said fifty arpents as he had not, by prior deeds before that time, sold and conveyed; that, by virtue of a deed dated the 25th day of September, 1823, the said David Musick and wife had already conveyed to David Adams, James Adams and Sarah Ann Adams, an undivided two-thirds of said fifty arpents, and that the portion conveyed to said Charles Mullikin by said deed was only one-third of said fifty arpents; that said Mullikin paid to said Musick therefor the sum of two hundred and fifty dollars, which was a full and large price for an undivided interest of fifty arpents in said tracts of land as the titles thereto then stood.

These defendants, further answering, state that at the time of the said conveyance to said Charles Mullikin the whole of these tracts of land therein mentioned were without any legal title thereto; that the tract spoken of as having belonged to Charles Tayon was covered by what is known as the Mill tract of Auguste Chouteau, and surveyed by the United States as United States survey No. 363, which was confirmed by the first board of commissioners on , and was a perfect title; that the one thousand

and ninety-two arpents of land mentioned as being the settlement right of Calvin Adams was covered by the claim of the inhabitants of St. Louis to commons, which was a superior title to it, and that the said claim of said inhabitants to commons covered and conflicted with the said tract of seven arpents in front by forty arpents in depth, known as the Motard tract; and the city of St. Louis, deriving title through said inhabitants, even asserted their right to said land; and that it was not until the year 1836 that the Congress of the United States, by the act of the 4th day of July, 1836, confirming the report of the board of commissioners upon land claims, confirmed the said tract of seven by forty arpents, and after that the proceedings in partition referred to were had between said Charles Mullikin and other parties, claiming through said Duncan, James Adams, David Adams, Sally Ann Adams, as is stated in said bill, and said tract of nine arpents and eighty one-hundredths of an arpent were allotted him as his interest therein.

These defendants, further answering, state and insist that thereby the said Charles Mullikin possessed a perfect title to whatever interest or estate David Musick or his grantees ever had in and to said tract thus allotted to him.

Defendants, further answering, say that they are entirely ignorant whether John Sloan ever was in the city of St. Louis, and if so, where he went or when he died; and if he be dead, what children he left or other family, or where or when they or any of them lived and died, nor whether they or any of them ever made any searches after said alleged deed from said Musick to said John Sloan; but if they did make such search, these defendants affirm that it was unavailing because such deed never existed, and not because it was mislaid or lost. And these defendants are ignorant, if there be a son by the name of J. R. Sloan, at what time he became of age, or whether he has sold and conveyed to complainant any, and if so, what interest in the tract of nine $\frac{81}{100}$ arpents allotted to Charles Mullikin as a part of said Motard tract.

These defendants, further answering, deny that all or any of the grantees of David Musick, or those claiming under them, had any notice of any title of John Sloan to the tract of fifty arpents mentioned in said bill of complaint.

Said defendants, further answering, admit that said Napoleon, Jerome, Virginia, and Octavia, are the children and heirs of said Charles Mullikin, but state that the interest of said defendants in and to said tract of nine $\frac{81}{100}$ arpents is derived through the will of said Charles Mullikin.

The defendants, further answering, state that if said John Sloan ever had any title to or interest in said Motard tract, or any part thereof, which they altogether deny, that he, and those claiming under him, are barred and precluded from setting up or enforcing the same at this time, the said Sloan, or any one claiming under

him, never having been in possession of said land or any part thereof at any time, no evidence of title having been recorded, and no claim of any kind having been asserted thereto until the commencement of this suit.

These defendants state that they, and those under whom they claim, have been in the quiet, peaceable, and uninterrupted possession of said tract of nine and eighty-one hundredths arpents for more than twenty years prior to the commencement of this suit, adverse to said John Sloan, and all persons claiming by, through, or under him, whereby the said complainant is barred and precluded from maintaining his action against said defendants, if any he ever had; all which matters and things these defendants are ready to maintain and prove, as this court may direct, and pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

R. M. FIELD,
J. R. SHEPLEY,
Sol's for Def'ts.

DISTRICT OF MISSOURI.

Charles Wiggins, Sidney S. Jerman, being duly sworn on their several oaths, state that the foregoing answer, and the matters and things therein mentioned, so far as the same are stated upon their own knowledge, are true, and so far as stated upon information and belief, they believe them to be true.

CHAS. WIGGINS,
SIDNEY S. JERMAN.

Sworn to and subscribed before me, this 3d day of October, 1857, by Chas. Wiggins and Sidney S. Jerman.

PETER FERGUSON,
Judge of St. Louis Probate Court.

N. MULLIKIN,
J. B. MULLIKIN.

Sworn to by Napoleon B. Mullikin and Jerome B. Mullikin, on 5 October, 1857.

PETER FERGUSON.
Judge of St. Louis Probate Court.

Order to open and file Depositions.

And afterwards, at the October term of our said circuit court for the districts of Missouri, on Monday, October 12th, 1857, the following proceedings took place in this cause, to wit:

RICHARD PINDELL, Compl't,
ag'st
NAPOLEON B. MULLIKINS, Def'ts. } In Chancery.

This day comes the complainant, by solicitor, and on his motion, it is ordered that the clerk of this court open the sealed packages containing depositions in this cause, which is done, and the depositions filed.

Replication to Answer.

And afterwards, at the April term of our said circuit court for the districts of Missouri, on Monday, April 5, 1858, the following proceedings took place in this cause:

RICHARD PINDELL, Compl't, ag'st NAPOLEON B. MULLIKIN, &c., Def'd'ts. } In Chancery.

This day come complainant, by solicitor, and files his replication to the answer of defendants filed herein, which replication is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Districts of Missouri, ss.

In the Circuit Court of said districts, of April Term, 1858.

RICHARD PINDELL, Compl't, ag'st NAPOLEON B. MULLIKINS and others, Defendants.

Replication of the said complainant to answer of defendants: This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of defendant is uncertain, untrue, and insufficient to be replied unto, without this, that anything in said answer contained, material to be replied unto, confessed and avowed, or traversed, is true; all which this repliant is ready to aver, prove, and maintain, and therefore prays as in his said bill he has before prayed.

A. BUCKNER,
Solicitor for Complainant.

Order granting leave to file an Amended Bill.

And afterwards, at the same term of our said circuit court for the districts of Missouri, on April 13, 1858, the following proceedings took place in this cause, to wit:

RICHARD PINDELL, Compl't, ag'st NAPOLEON B. MULLIKIN, &c., Def'ts. } In Chancery.

This day come the parties, by their solicitors, and on motion of the complainant, and upon affidavit filed, it is ordered that this cause be continued until the next term of this court, at the costs of said complainant; and on his further motion, leave is given him to file an amended bill, making the widow of Charles Mullikin, dec'd, a party defendant to this suit, said amendment to be filed within days.

And afterwards, at the October term of our said circuit court for the Missouri districts, on October 22, 1858, the following proceedings took place in this cause, to wit:

RICHARD PINDELL, Compl't,
ag'st
NAPOLEON B. MULLIKIN, &c., Def'ts. } In Chancery.

This day come the parties, by their solicitors, and by consent, it is ordered that this cause be set for hearing instanter, and then the hearing of said cause upon bill, amended bill, answers, replications, exhibits, and depositions was commenced, but not being concluded at the hour of adjournment, further proceedings are continued over until to-morrow morning.

Decree.

And afterwards, at the same term of our said circuit court for the districts of Missouri, on October 23, 1858, the following proceedings took place in this cause:

RICHARD PINDELL, Compl't,
ag'st
NAPOLEON B. MULLIKIN, &c., Def'ts. } In Chancery.

This day come again the parties, by their solicitors, and this cause came on to be further heard, and the same was heard in full, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz: that the bill of complainant be dismissed; and it was further ordered, adjudged, and decreed that the complainant pay to the defendants the costs of this suit, and that execution issue therefor.

Order allowing Appeal.

And afterwards, at the same term and day of our said circuit court, for the districts of Missouri, the following proceedings took place in this cause:

RICHARD PINDELL, Compl't,
ag'st
NAPOLEON B. MULLIKIN, &c., Def't. } In Chancery.

This day comes again the plaintiff, by his solicitor, and on his motion an appeal is allowed said complainant to the Supreme Court of the United States from the decree rendered herein, and

twenty days allowed to execute an appeal bond, to be approved by one of the judges of this court; and the solicitors for parties file an agreement in writing, as to the papers and evidence to be copied into the record for the Supreme Court of the United States, and the clerk of this court is directed to copy the same according to such agreement; which said agreement is in the words and figures following, to wit:

Agreement as to papers so to be used on the trial, and to be copied.

In the Circuit Court of the United States, for Missouri districts.

PINDELL
ag'st
NAPOLEON MULLIKIN and others.

It is agreed that all the papers, documents, depositions, and agreements filed in said cause, or used by either party on the trial of the said cause, may be copied into and form part of the transcript to be transmitted to the Supreme Court.

J. R. SHEPLEY,
Solicitor for Def'ts.
AYLETT BUCKNER,
Solicitor for Complainant.

Appeal Bond.

The appeal bond referred to in the above order is in the words and figures following, to wit:

Circuit Court of the United States, for the eighth circuit and Missouri district.

RICHARD PINDELL
ag'st
NAPOLEON B. MULLIKIN, &c. } On Appeal.

Know all men by these presents, that we, Richard Pindell, as principal, and Harry J. Bodley, as surety, are held and firmly bound unto Napoleon B. Mullikin, Jerome B. Mullikin, Charles B. Wiggins, and Virginia J., his wife, Sidney S. Jerman, and Octavia, his wife, in the sum of five hundred dollars, and for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, and our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this tenth day of November, 1858.

Whereas Richard Pindell, on the twenty-third day of October, 1858, prayed an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree rendered on the day and year last aforesaid in said cause by the circuit court of the United States, for the Missouri districts, said decree dismissing complainant's bill with costs:

Now, therefore, the condition of this obligation is such, that if the above named Richard Pindell shall well and truly prosecute the appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

RICHARD PINDELL, [SEAL.]
By AYLETT BUCKNER,
Atto. in Fact.
H. J. BODLEY. [SEAL.]

Approved Nov. 10th, 1858.

SAMUEL TREAT,
U. S. District Judge for East Dist. of Mo.

The following are the papers filed and agreed to be copied in the transcript for the Supreme Court:

Complainant's Papers.

Deed of Musick to Duncan.

Know all men by these presents, that David Musick, and Prudence, my wife, of the county of St. Louis and Territory of Missouri, for and in consideration of the sum of three hundred dollars, lawful money of the United States, to us, at and before the ensealing and delivery hereof, well and truly paid by Robert Duncan, of the same place, the receipt whereof we do hereby acknowledge, and therefrom and of any part or parcel hereof do acquit and forever discharge him, the said Robert Duncan, his heirs and assigns, have granted, bargained, and sold, and hereby grant, bargain, and sell unto him, the said Robert Duncan, his heirs and assigns forever, the one equal undivided third part of the following tracts or parcels of land (to wit:) First, the one equal third part of seven arpens in front, by forty in the rear, situate in that part of the *prairy* near the town of St. Louis, county aforesaid, called Cul de-Sac, and on the waters of the creek of Auguste Chouteau's mill; second, the one equal undivided third part of one arpen and a half in front, by forty in the rear, situated in the Big *Prary*, about three miles westwardly of the town of St. Louis, and bounded on one side by land formerly belonging to widow Chouteau, and on the other by land formerly belonging to Charles Tayon; and thirdly, the one equal undivided third part of one thousand and ninety-two arpens, more or less, formerly belonging to one Calvin Adams, as settlement-right; which several tracts of land above mentioned amount, in the whole, to the quantity of fourteen hundred and thirty-two arpens, and are the same which I, the said David Musick, purchased from Alexander McNair, and Margaret, his wife, by deed, bearing date the fourteenth day of December, one thousand *eighteen* hundred and eight, and acknowledged the

thirteenth of January instant, purchased by said McNair at the sheriff's sale, as appears by deed from Jeremiah Connor, sheriff, to said McNair, bearing date the eight day of July, one thousand eight hundred and eight, at the suit of Thomas Wright against said Calvin Adams, it being part of the said tract of land which said Calvin Adams purchased from Patrick Lee by deed, bearing date the twenty-second day of August, one thousand eight hundred and three, as will more fully and at large appear, reference being had to said deed in the office of the clerk of the circuit court for the county of St. Louis aforesaid: to have and to hold the said equal undivided third part of said fourteen hundred and thirty-two arpens of land, more or less, together with all and singular the privileges and appurtenances to the same belonging, or in anywise appertaining, unto him, the said Robert Duncan, his heirs and assigns forever, upon this express condition, nevertheless, that the said Robert Duncan being well acquainted with the titles of said land, takes the aforesaid equal undivided third part of the same, as aforesaid, at his own risk and hazard, without any recourse against the said David Musick, in case the titles to the said premises, or any part thereof, should altogether fail.

And whereas I, the said David Musick, did, prior to this day, *sold* and *conveyed* fifty arpens of the above premises, with the consent and knowledge of him, the said Robert Duncan, therefore it is covenanted and agreed upon, before the signing and delivery hereof, that the said fifty arpens shall be deducted or reserved out of the aforesaid quantity of fourteen hundred and thirty-two arpens, or any of the tracts within mentioned, and that he, the said Robert Duncan, is to have the one equal undivided third part of the remaining quantity, to wit: the one equal undivided third of thirteen hundred and eighty-two arpens, more or less, in manner and form aforesaid. In testimony whereof, I, the said David Musick, and Prudence, my wife, together with the said Robert Duncan, have hereunto set our hands and seals, this nineteenth day of January, in the year of our Lord one thousand eight hundred and twenty.

DAVID MUSICK, [SEAL.]
PRUDENCE MUSICK. [SEAL.]

Signed, sealed, and delivered in presence of—
A. STEWART.

TERRITORY OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this nineteenth day of January, in the year eighteen hundred and nineteen, personally comes before me, a justice of the peace, David Musick and Prudence Musick, his wife, and voluntarily acknowledged that they voluntarily signed, sealed, and delivered the foregoing instrument of writing for the uses and

purposes therein contained, and Prudence Musick, the wife of the said David Musick, having been made acquainted with the contents thereof by me, and by me examined separate and apart from her husband, acknowledged and averred that she executed the same freely and voluntarily, without any force, fear, or undue influence of her said husband. Taken and certified on the day and year aforesaid, before me,

A. STEWART, *J. P.*

Recorded this 5th day of February, 1820.

ARCHIBALD GAMBLE, *Cl'k.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder in and for the county of St. Louis, certify the foregoing to be a true copy of a deed from David Musick and wife to Rob. Duncan, of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains of record in my office, in book I, pages 52 and following:

Witness my hand and official seal the 14th day of October, 1858.

[L. S.] C. KUMLE, *Recorder*,
Per J. CONRAD, *D'y.*

Musick and Wife to Mullikin.

Know all men by these presents, that whereas David Musick, by his deed, dated on the nineteenth day of January, in the year eighteen hundred and twenty, conveyed to Robert Duncan the following described tracts of land: first, the one equal third part of seven arpens in front by forty in the rear, situate in that part of the prairie near the town of St. Louis, called Cul-de-Sac; second, the one equal undivided third part of one arpen and a half in front by forty in the rear, situate in the Big Prairie, about three miles westwardly from the town of St. Louis; third, by the one equal undivided third part of one thousand and ninety-two arpens, more or less, formerly belonging to one Calvin Adams, the whole or entirety of the said tracts, amounting to the quantity of four hundred and thirty-two arpens, excepting and reserving in said deed from conveyance fifty arpens, lying in said tracts, or any part thereof: Now this deed witnesseth, that we, said David Musick, and Prudence, wife of said David, for and in consideration of the sum of two hundred and fifty dollars to us in hand paid by Charles Mullikin, of the city of St. Louis, the receipt whereof is hereby acknowledged, have bargained, sold, quit-claimed and conveyed, and by these presents do bargain, sell, quit-claim, and convey to the said Charles Mullikin all our right, title, interest, and claim, and property in and to the said fifty arpens of land, lying and situate as described in the said tract of fourteen hundred and thirty-two arpens; to have and to hold the said fifty arpens to him,

said Charles Mullikin, and to his heirs and assigns forever; and the said David Musick doth hereby covenant, that the said fifty arpens of land, and the title thereto, is free and clear of all incumbrances and obstructions, done or suffered by or through him, but no further, and to no greater extent. The deed above referred to, from David Musick to Duncan, is recorded in the recorder's office of the county of St. Louis, in book I, pages 52 and 53. In witness whereof, the said David Musick, and Prudence, his wife, have hereunto set their hands and seals, on this fourteenth day of April, in the year eighteen hundred and thirty-one.

DAVID MUSICK, [SEAL.]
PRUDENCE MUSICK. [SEAL.]

STATE OF MISSOURI,
County of St. Louis.

Be it remembered, that on this 25th day of April, in the year of our Lord eighteen hundred and thirty-one, personally appeared before the undersigned, a justice of the peace within and for the county of St. Louis aforesaid, David Musick and Prudence his wife, both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as having executed the same, and severally acknowledged the same to be their act and deed, for the purposes therein specified; she, the said Prudence, being by me first made acquainted with the contents thereof and examined separate and apart from her husband, whether she executed the said deed and relinquishes her dower to the lands and tenements therein mentioned voluntarily, freely, and without *compution* or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely, and without any *compultion* or undue influence of her said husband.

Taken and certified the day and year aforesaid.

JOEL L. MUSICK, *J. P.*

The word "which," in 12 line from top 1st page, word "said," same page, last word in 14 line from top, erased in original.

Recorded 26th April, 1831.

ARCHIBALD GAMBLE, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder in and for the county of St. Louis, certify the foregoing to be a true copy of a deed from David Musick and wife to Chs. Mullikin, of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains of record in my office, in book R, pages 65 and following.

[L. S.] Witness my hand and official seal, the 14th day of October, 1858.

C. KUMLE, *Recorder.*
Per J. CONRAD, *D'y.*

Sloan and wife to Pindell.

This indenture, made and entered into this 17th day of June, 1856, between J. R. Sloan and Elizabeth S. his wife, of the one part, and R. Pindell of the other part, witnesseth, that the said parties of the first, for and in consideration of the sum of fifteen hundred dollars, in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do give, grant, bargain, sell, and convey to the said party of the second part all that tract or parcel of land in the county of St. Louis, granted to , and containing fifty arpens, being the same land sold and conveyed to John Sloan by David Musick in the year 1817, being the same land specified as fifty arpens, sold and conveyed by the said David Musick in a deed executed by him to Robert Duncan on the nineteenth day of January, one thousand eight hundred and twenty, prior to the execution of said deed, with the consent and knowledge of said Duncan: to have and to hold the said land and premises to the said Pindell and his heirs and assigns forever; and the parties of the first part hereby warrant and defend the same against all persons claiming by, through, or under them alone.

In testimony whereof, they have hereto set their hands and seals the day and date above written.

J. R. SLOAN. [SEAL]
E. S. SLOAN. [SEAL.]

Wit.: HENLY R. TRUAW.

STATE OF MISSOURI,
County of Cape Girardeau, ss.

Be it remembered that J. R. Sloan, and Elizabeth S. Sloan, wife of the said J. R. Sloan, who is personally known to the undersigned, clerk of Cape Girardeau court of common pleas within and for the city of Cape Girardeau, county and State aforesaid, to be the same persons whose names are subscribed to the foregoing deed, as a part thereto, this day appeared before me and acknowledged they executed and delivered the same as their *voluntarilly* act, deed, for the uses and purposes therein contained and expressed; and the said Elizabeth S. Sloan, on examination separate and apart from her said husband, acknowledged that she signed and executed the deed and relinquished her dower in the real estate in said deed *mention*, voluntarily, freely, and without any persuasion or undue influence of her said husband.

In witness whereof, I, Henly R. , clerk of the court aforesaid, have hereunto signed my name and affixed the [L. S.] official seal of said court, at office in the city of Cape Girardeau, county and State aforesaid, the 17th day of June, A. D. 1856.

HENLY R. TRUAN, *Cl'k.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder for said county, certify that the foregoing deed was filed for record in my office, Dec'b'r 20, 1856, and is truly recorded in book No. 183, page 267.

Witness my hand and official seal, the date aforesaid.
[L. S.]
C. KUMLE, *Recorder.*

Motard to Pat. Lee.

Copy.

En la villa de Sn. Louis de Illinois a los siete dias del mes ne Noviembre del ano de mil ochocientos a defecto de escribano publico en esta referida: ante mi Dn. Carlos Dehault Delassus ten'te cor'l de las reales extos y ten'te en gob'or de esta alto Louisiana y en presenscia de los testigos de asistencia Dn. Pedro Lafillard y Joseph Hortiz estubo presente en su persona Dn. Josef Motard vesino de esta susadicha villa et gual por estas presentas declara y contiesa haver oy dia vendido redido transportado y abandonado tante pasa havra como para siempre y promete horug ozasy preservar de todas dundas duarios nypotuas y biciones subrantiones y generalmente todo lo que lute genedee sen a Patricio Lee resino y qualmente y del conseriso de la mte. dicha villa a que presente stipulando aceptando y adquiriendo para el y sur herederos a otros que representen su derecho un terreno de junto y veinte seis se frente y ciento y imquentado propriedor situado en esta villa de Sn. Louis y lindro de sur lado con el terreno del adquiriente del otro-ala segunda callo de esta referida villa suprimer frente a otra calle de traviesa que separarl 2o Dn. Gregorio Surpy y por detras al terreno de Luis Bompont alias Laflor todo entorado con estasas de cedro y en el f'ho terreno le halla construsdor una easa viegra de treinta pus en largo y veinte y ciedo de hancho y una ensina que tiene a la ensa todo enbiesto con texamanis y plansbrada alto y baxo todo latgual el sor. adquiriente declara haver siesto y visetado de cogno se la pur contiento y satisfecho sin nada retenusa en resuvarso adquiriendoto segun y conforme a las leyes por elprono y senna de siete sientos pesos preaz achos al cubo do concino de esto data en dineso concinte de este lays, cuya suma el referido Dn. Patricio Lee se obliga a satisfacer a la orderr y disposecion del ste. Dn. Joseph Motard en et termino prescripto; y remunio a la non municata pescuria y a todos los pruesos lo sudesuhos de su favor

con la ley general que le defiendo in forma; igualmente el ante d'to Joseph Motard vende y libra en este mismo dia y voss las condiciones ante d'tas al referido Dn. Patricio Lee como siete aspanos de tiena de trente y como quarenta de profondos situados en la trachria que llaman el qu. de sague contra la riviere del Molina de Dn. Augustin Chonteau fin que el adquiriente punda impedir a las derechos de esta d'ra rivera a suproximdal al referido Chouteau en la d'tta tiena se hallan construdas algunos cassillas de pono consideracion, las quales y el todo et referido adquiriente declara haver visto y visitado y se da ygualmente pan satisfecho mediante el presio y suma de tresicentos pesos payudnos en el termino de tresanos satisfaciendo eado año antivico al presio coniente de esto lays, a cuyo payaminto D. obliga et referido Dn. Patricio Lee en las terminos prescriptos en esta vente de tiena se comprehenderan unaspan y medio de tiena que el referido Dn. Joseph Motard libra y vende al missimo adquiriente la gual linda de un lado con la tiena de la S'a vinda a Chouteau y del otro a la de Dn. Carlos Tayon Schnado en el sitio que la antendanto con la sola diferencia que esta ultima so halla en la leyunda comission de esta villa y que el d'te vendedor declara pertenner le de derecho, asi han convenido y anosdado prometion do f'a obligando f'e echo y pasado en esta sola de gobierno en personira de las ememerados testigos de asistencia que han ni mado connugo al referido ten'te en gob'or y las partes et numo dia mes y aña q. est supra.

(Signed) JOSEPH MOTARD,
PATICO LEE,
JOSEI'H HORTIZ,
LIC. LAFFILLARD,
CARLOS DEHAULT DELASSUS.

I do hereby certify that the above is a true copy of the original remaining in my hands, St. Louis, February twenty-sixth, in the year of our Lord eighteen hundred and six.

M. P. LEDUC, *Recorder.*

The following is the translation of the above deed on file in this cause:

Translation.

In the town of St. Louis, of Illinois, on the seventh day of the month of November, of the year one thousand eight hundred, in the absence of a notary public in the said town, personally appeared before me, Don Carlos Dehault Delassus, lieutenant colonel of the royal armies, and lieutenant governor of this Upper Louisiana, in the presence of the witnesses of assistance Don Pedro Laffilard and Joseph Hortiz, Don Joseph Motard, inhabitant of the above mentioned town, who, by these presents, declares and con-

fesses to have this day sold, ceded, transferred, and abandoned, as well now as forever, to have and to hold the same free from all debts, dowries, hypothecations, incumbrances, substitutions, and generally all that might become such, to Don Patrick Lee, likewise an inhabitant, and engaged in the commerce of this above said town, being here present stipulating, accepting, and purchasing for him and his heirs and assigns, a lot of one hundred and twenty feet front and fifty feet in depth, situated in this town of St. Louis, and bounded on one side by the lot of the purchaser, on the other by the second street of the said town; its first front by another cross-street which separates it from Don Gregory Surpy, and on the back by the lot of Louis Bonpard, alias Laflor, all enclosed with piquets of cedar; and on the said lot there is to be found constructed an old house thirty feet in length by twenty-five in width, and also a kitchen entirely roofed with "texamains," and floored above and below, all which the said purchaser declares he has seen and visited, and with which he acknowledges himself to be contented and satisfied, without retaining or reserving anything to himself, purchasing in accordance with and in conformity to the laws, for the price and sum of seven hundred dollars, payable at the end of one year from this date in current money of this country, which sum the said Don Patrick Lee obliges himself to satisfy to the order and disposition of the said Don Joseph Motard on the terms prescribed, and renounces the non-numerated money, and all the rights and privileges in his favor, with the general law, which defends him in form; and likewise the aforesaid Don Joseph Motard sells and delivers on this same day, and under the conditions aforesaid, to the said Don Patrick Lee, about seven arpents of land in front by about forty in depth, situated in the prairie called Cul-de-Sac, against the river of the mill of Don Auguste Chouteau. And the purchaser shall not be at liberty to impede the rights of this river and its proximity to the said Señor Chouteau. On the said land are to be found constructed some small houses of little importance, the which, and all, the said purchaser declares he has seen and visited, and says he is equally satisfied to receive the price and sum of three hundred dollars, payable in wheat at the end of three years, satisfying each year one-third at the current price in this country. The said Don Patrick Lee obliges himself to the payment thereof according to the terms prescribed. In this deed shall be included an arpent and a half of land which the said Don Joseph Motard delivers and sells to the said purchaser, bounded on one side by the land of the widow Chouteau, and on the other by that of Don Carlos Tayon, situated in the same place with the antecedent one, with this only difference, that this last is in the second concession of this town, and which the said vendor declares to belong to him of right. Thus they have agreed and given their assent, promising, &c., obliging, &c.

Executed in the hall of the governor, in the presence of the aforesaid witnesses of assistance, who have signed with me, the said lieutenant governor and the parties, the same day, month and year as aforesaid.

CARLOS DEHAULT DELASSUS,
JOSEPH MOTARD,
PATRICK LEE,
JOSEPH HORTIZ,
P. LAFFILORD.

I, the undersigned, Gregory Surpy, in the name and asexecutor testamentary of the last will and testament of Joseph Motard, acknowledge to received of Mr. Patrick Lee the sum of seven hundred dollars in current money, and the quantity of three hundred bushels of wheat, mentioned in the deed of the other parts, of which I acquit and discharge the said Señor Patrick Lee, giving him by the present full and entire quittance and discharge, giving him, by the present, a release of the obligations, as above set forth, and of which he is hereby discharged.

GREGORY SURPY.

Witness, MARY P. LEDUC.

Recorded 9th July, 1833.

Delivered the original to Robert Duncan, 9th July, 1833.

ARCHIBALD GAMBLE,
Recorder.

Pat. Lee to C. Adams.

En la villa de Sn. Luis de Illinois alos veinte y dos dias del mos de Agosto del mo. de mil ochocientos tres; ad efecto de Escribano *k. k. Co.* en ella antemi D'n Carlos Dehault Delassus Coronel de los Rea's Exercitos y Ten'te de Govean'or vila alte Louisiana y en presencia vilas testigos de asistencia D'n Joseph Horniz, y D'n Franco. Valois estimo presente en supropia personna D'n Patricio Lee, vecino y vil comisio di esta villa, a qual por est as presentes do clara y confiessa haver ay dea vendido, cedido, transportado, y abandano do, tanto para haver, como para siempre, y promoto haver gozan y preservar ostodas Dendas, Desarios hipotuas, Ibisiones, substitued ones, y generalm'te todo lo que sexto pre lies en a Calvino Adams viesno y gualmente de est a misma villa a qui presente, stipulando, acceptando y adquesindo para et y sus herederos n otros representen su derecho, como siete arpanes de tierra de treinte y quaranta de profundidad situados en la prudisea de esta villa quellaman el que de sague contra la sivera del molino de D'n Auguste Chouteau, sinque el adquiriente pueda y repedie a los derechos a esta rivera y su aproximidad al repuedo Sor. Chouteau, y gualmente livra y vende un aspan y medio de tiera de frente y quarenta de profundidad en la segunda concesion de la misma pra-

deria quelin da de unlado con la vila vinda Chouteau y del otro a la de D'n Carlos Tallon cuyos tierras pertenean al enunciado D'n Patricio Lee, por haver las adquerido del definito D'n Jph. Motard, por venta truidisa que exciste end archivo de este Governo confecha del siete a Noviembre de mil ochocientos, y el d'ho Calvino Adams nos declare havir viste, y visstado de las que seda por contente y satisficho, sissuado nacrise ni resevarse adquiriendo las legues y conforma las leyes y por el precio y suma de tres cientos pesos pagados en los terminos y especies que siguen; a haver en et mes di vitubro de este presente ano rion minotis de maiz, en el ano que vieno de mil ochocientos quatro, cion miates de trigo, y ciento de maiz; y en el ano siguiente de mil ochocientos cinco, cios mi notes de trigo, losque haran la total suma de los tres cientos pesos, quedando las l'hur tierras hipotecadas a favor dal vendedor hasta la total satisfacion sinque el comprador pueda disponer di ellas apenas va mililad y six condenado a pasao los gartos que ocasione la contra viniera, a fy convenida y anos dado, promitiesdo, &c., obligando, &c., en t'e de loqual lo frimaroso las partes y testigos de asisteficia conmigo et referido Ten'te de Governador mismo dia, mes, y ano, que st. supra.

CARLOS DEHAULT DELASSUS,
PATRICE LEE,
CALVIN ADAMS,
JOSEPH HORNIZ,
FCO. VALOIS.

Translation.

The following is the translation of the foregoing deed as filed in this cause:

In the town of St. Louis, of Illinois, on the twenty-second day of the month of August, in the year one thousand eight hundred and three, in the absence of a notary public in the said town, personally appeared before me, Don Carlos Dehault Delassus, colonel of the royal armies, and lieutenant governor of the Upper Louisiana, and in the presence of the witnesses of assistance, Don Joseph Hortiz and Don Francis Valois. Don Patrick Lee, inhabitant of and engaged in the commerce of this town, who, by these presents, declares and confesses to have this day sold, ceded, transferred, and abandoned, now and forever, to have and to hold the same free from all debts, dowries, hypothecations, incumbrances, substitutions, and generally whatever might become such, to Calvin Adams, likewise an inhabitant of this said town, here present, stipulating, accepting, and purchasing for him and his heirs and assigns, upwards of seven arpents of land in front, by forty in depth, situated in the prairie of this town, called le Cul-de-Sac against the river of the mill of Don Auguste Chouteau, the said purchaser not being at liberty to impede the rights to this river, and its proximity to the said Señor

Chouteau; likewise he delivers and sells one arpent and a half in front by forty in depth, in the second concession of the said prairie, bounded on one side by *the of* the said widow Chouteau, and on the other by that of Don Carlos Fallon, which *hands* belong to the said Don Patrick Lee, he having purchased them of Don Joseph Mortard, dec'd, at adjudication sale, which exists in the archives of this government, dated November the seventh, one thousand eight hundred; and the said Calvin Adams declares to us, that he has seen and visited them, with which he is contented and satisfied, without reserving or retaining anything to himself, purchasing them in accordance with, and in conformity to, the laws, and for the price and sum of three hundred dollars, paid in terms and species as follows, to wit: in the month of October, of this present year, one hundred bushels of corn; in the succeeding year one thousand eight hundred and four, one hundred bushels of wheat, and one hundred of corn; and in the following year, one thousand eight hundred and five, one hundred bushels of wheat, which shall make the total sum of three hundred dollars; the said lands to remain hypothecated in favor of the vendor until the whole be satisfied. The purchaser shall not have power to dispose of them on pain of nullity, and of being condemned to pay the costs which a contravention would occasion. Thus they have agreed and given their assent, promising, &c., obliging, &c.

In testimony whereof, the parties and witnesses of assistance with me, the said lieutenant governor, have signed the same day, month, and year, as above.

CARLOS DEHAULT DELASSUS,
PATRICK LEE,
CALVIN ADAMS,
JOSEPH HORTIZ,
FRANCIS VALOIS.

C. Adams, by Sheriff, to A. McNair.

To all to whom these presents shall come, I, Jeremiah Conner, sheriff of the district of St. Louis, send greeting:

Whereas a certain writ scieri facias, directed to me, did, on the second day of June, in the same year, issue out of the office of the clerk of the general court of the Territory of Louisiana, in favor of one Thomas Wright against Calvin Adams, a copy of which said writ is hereunto annexed, and forms part of this deed; and whereas, by virtue thereof, and to satisfy the said execution, I did levy upon and attach all the right, title, and interest of Calvin Adams in and to a certain tract of land said to contain the quantity of fourteen hundred and thirty-two arpens, more or less, late the property of one Motard; and the said premises being by me, the said sheriff, advertised according to the law, were, on the seven-

teenth day of July, in the same year, at the court-house door, and whilst the court of common pleas of said district was in session, cried and sold to Alexander McNair for the sum of one hundred and five dollars current money of the United States:

Now, therefore, know ye, that by virtue of the powers vested in me by law, and for and in consideration of the said sum of one hundred and five dollars current money as aforesaid, to me, the said sheriff, well and truly paid and satisfied by the said Alexander McNair, I do hereby grant, assign, transfer, and make over to him, the said Alexander McNair, his heirs and assigns, all the right, title, interest, and property of him, the said Calvin Adams, in and to the aforementioned and described premises and appurtenances, to have and to hold the same to him, the said Alexander McNair, his heirs and assigns, forever.

In testimony whereof, I, the said sheriff, have hereunto set my hand and affixed my seal, this eighth day of July, in the year of our Lord one thousand eight hundred and eight.

J'H CONNOR, *Sh'f D. S. L.* [L. S.]

Signed, sealed, and delivered in the presence of—
THOS. F. RIDDICK.

I, Thomas F. Riddick, clerk of the court of common pleas for St. Louis district, do hereby certify that Jeremiah Connor, esq., sheriff of Saint Louis district, appeared in open court on the tenth day of November, one thousand eight hundred and eight, and acknowledged the within deed to Alexander McNair to be his proper act, for the purposes therein contained.

Given under my hand and the seal of said district.
[SEAL.]
THOS. F. RIDDICK.

A. McNair to D. Musick.

To all people to whom these presents shall come, greeting:

Know ye that we, Alexander McNair and Margaret his wife, for and in consideration of the sum of one hundred and five dollars, to us in hand paid by David Musick, of the district of Saint Louis, have assigned and transferred, and do hereby transfer and assign unto him, the said David Musick, his heirs and assigns forever, all our right, title, and interest in and to the premises in the within deed described, but without recourse to us or our heirs, executors, or assigns, in case of failure of title: to have and to hold the same to him, the said David Musick, his heirs and assings forever. In witness whereof, we have hereunto set our hands and seals, at St. Louis, this 14th day of December, 1808.

A McNAIR. [SEAL.]
MARG'T S. McNAIR. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. HEMPSTEAD.

COUNTY OF ST. LOUIS, *ss.*

Personally appeared before me, a justice of the peace of the county aforesaid, Alexander McNair and Margaret S. his wife, who acknowledged the above instrument of writing to be *his* act and deed, for the purposes therein mentioned; and the said Margaret S. being by me examined separately and apart from her said husband, doth make her acknowledgment that she executed the same voluntarily and freely, without the compulsion or undue influence of her said husband.

Given under my hand and seal, this 13th of January, 1820.

J. V. GARNIER, *J. P.* [SEAL.]

Recorder February 5th, 1820.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI.

County of St. Louis, ss.

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of a deed from Calvin Adams, by sheriff, to Alexander McNair, together with the certificate of acknowledgment and the assignment to David Musick, together with the certificate of acknowledgment and the date of recording thereof, as fully as the same remains of record in my office, in book I, page 49.

Witness my hand and seal, this 13 day of April, 1858.

[L. S.]

C. KUMLE. *Recorder.*

Per J. CONRAD, *D'y.*

Letters Testamentary of Chas. Mullikin.

COUNTY OF ST. LOUIS, *ss.*

The State of Missouri, to all persons to whom these presents shall come, greeting:

Know ye, that the last will and testament of Charles Mullikin, deceased, hath in due form of law been exhibited, proved, and recorded in the office of the judge of the probate court for St. Louis county, a copy of which is hereunto annexed; and, inasmuch as it appears that Napoleon B. and Jerome B. Mullikin have been appointed executors in and by the said last will and testament, to execute the same, these letters testamentary on the estate of Charles Mullikin are granted to Napoleon B. Mullikin and Jerome B. Mullikin, the executors in said will named, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, we do hereby authorize them, the said Napoleon B. Mullikin and Jerome B. Mullikin, as such executors, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said Charles Mullikin at the time of his

death, in whosoever hands or possession the same may be found, and to perform and fulfil all such duties as may be enjoined on them by said will, so far there shall be property and the law charge them; and in general to do and perform all other acts which are or hereafter may be required of them by law.

In testimony whereof, I, Peter Ferguson, judge of the probate court in and for the county of St. Louis, hereto sign my name and affix the seal of said court, at office, this sixteenth day of July, A. D. 1851.

[L. S.] PETER FERGUSON, *Judge of Probate.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, William F. Ferguson, clerk of the probate court for the county of St. Louis, certify that the foregoing is a true copy of the letters testamentary granted to Napoleon B. Mullikin and Jerome B. Mullikin on the estate of Charles Mullikin, deceased, as the same now remains on record at my office.

In testimony whereof, I hereto set my hand and affix the seal of the probate court of the county aforesaid, at office in said [L. S.] county, this fifth day of April, in the year of our Lord, 1858.

WILLIAM F. FERGUSON, *Clerk.*

Extract from Chas. Mullikin's Inventory.

1 tract of land containing nine and $\frac{80}{100}$ arpents, situated and being on Chouteau avenue, adjoining the property of Archibald Gamble, and to which there is no visible title.

STATE OF MISSOURI,
County of St. Louis, ss.

I, William Ferguson, clerk of the probate court of the county of St. Louis, certify that the foregoing "paragraph," beginning with "1 tract of land" and ending with "visible title," is truly extracted from the inventory of the estate of Charles Mullikin, deceased, as the same now remains on file in this office of the judge of probate of the county of St. Louis.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of St. Louis, at office in [SEAL.] said county, this fifth day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

WILLIAM F. FERGUSON, *Clerk.*

Jno. Sloan, dec'd, Letters, &c.

STATE OF MISSOURI,
County of St. Louis, ss.

Henry Chouteau, clerk of the county court, within and for the

county of St. Louis, in the State of Missouri, to all to whom these presents shall come, greeting:

Whereas John Sloan, late of the county of St. Louis, deceased, died intestate, as it is said, and you, James R. Sloan, having given sufficient security, I do therefore give and grant unto you, the said James R. Sloan, in obedience to an order of said court, full power and authority to administer all and singular the goods, chattels, rights, and credits of the said deceased, lying and being within the said county of St. Louis, and to demand, collect, and in a legal manner require and receive all and all manner of debt and debts due and owing to the said deceased, and well and faithfully to dispose of the same according to law. And lastly, I do hereby constitute and appoint you, the said James R. Sloan, administrator of all and singular the goods, chattels, rights, and credits of the deceased.

In testimony whereof, I have hereunto set my hand and official seal, at St. Louis, this tenth day of February, in the year
[SEAL.] of our Lord one thousand eight hundred and thirty-eight, and of the American independence the sixty-second.

HENRY CHOUTEAU, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss.

At a term of the county court, begun and held at the city of St. Louis, within and for the county of St. Louis, in the State of Missouri, on the first Monday in March, being the second day of said month, in the year of our Lord one thousand eight hundred and forty, were present Mary Philip Leduc, esquire, presiding justice, and Joseph Le Blond, esquire, justice, Marshall Brotherton, esq., sheriff of the county of Saint Louis, and Henry Chouteau, clerk.

Court adjourned from day to day till Tuesday, 7th April, 1840.

Court met, pursuant to adjournment; present, Mary Philip Leduc, esquire, presiding justice, and Henry Walton, esquire, justice.

Order of Publication.

James R. Sloan, administrator of John Sloan, deceased.

It appearing to the court that the citations issued against James R. Sloan, administrator of John Sloan, deceased, have been returned not served, it is ordered that an alias be published according to law.

STATE OF MISSOURI,
County of St. Louis, ss.

At a term of the county court, begun and held at the city of Saint Louis, within and for the county of Saint Louis, in the State of Missouri, on the first Monday of June, being the first day of said month, in the year of our Lord one thousand eight hundred

and forty, were present Mary Philip Leduc, esq., presiding justice, and Henry Walton, esq., justice, Marshall Brotherton, esq, sheriff of the county of Saint Louis, and Henry Chouteau, clerk.

Court adjourned from day to day till Tuesday, 30th June, 1840.

TUESDAY, 30*th June*, 1840.

Court met pursuant to adjournment.

Present, all the justices.

Letters Revoked.

James R. Sloan, administrator of John Sloan, deceased.

James R. Sloan, administrator as aforesaid, being solemnly called, comes not but makes default, and it being proved to the court that the alias citation ordered to be published has been published according to law in the Missouri Republican, a newspaper printed in the city of St. Louis, and no person appearing to show cause to the contrary, the court revoke his appointment as administrator of John Sloan, deceased, and order that he pay all the costs.

STATE OF MISSOURI,
County of St. Louis, ss.

I, William F. Ferguson, clerk of the probate court of the county of Saint Louis, certify that the foregoing is a true copy of the letters of administration granted to James R. Sloan on the estate of John Sloan, deceased, and of the proceedings of said court in the order of publication and in the revocation of the letters of said administrator, as the same now severally remain of record in the office of the judge of probate of the county of Saint Louis.

In testimony whereof, I hereto set my hand and affix the seal of the probate court of the county of St. Louis, at office [SEAL.] in said county, this eleventh day of October, in the year eighteen hundred and fifty-eight.

WILLIAM F. FERGUSON,
Clerk.

Plaintiffs' Depositions.

The following deposition of David Adams was taken before Benjamin F. Hickman, United States commissioner, at St. Louis, on the 25th day of September, A. D. 1857:

D. Adams's Deposition.

The said David Adams, after being carefully examined and cautioned, and sworn to testify the whole truth, deposeth and says:

Question by Aylett Buckner, atto. for compl'ts. Did you know a man by the name of John Sloan?

Answer. I did.

Question by same. At what period of time did you know him?

Answer. In the month of February, 1815.

Question by same. Did you know him before and after that time?

Answer. Yes, I did.

Question by same. How long before and after that time did you know him?

Answer. I knew him for some months (before the months) before February, 1815, and continued to know him until the month of April or May, 1815, when I separated with him in Natchez.

Question by same. Where did he reside during the time that you knew him?

Answer. His family resided here in St. Louis.

Question by same. Who was your father?

Answer. Calvin Adams.

Question by same. Where did your father reside in February, 1815, and for some time previous thereto?

Answer. On the Motard tract in the present limits of city of St. Louis, and what was then called the Cul-de-Sac.

Question by same. Did you ever see Sloan at your father's; and if so, what transpired between them there?

Answer. Sloan and another man came out to my father's in February, 1815; they came out to see my father, as Mr. Sloan wanted to go to New Orleans as a hand on a keel-boat of my father's.

Question by same. Did they enter into any agreement on that occasion; and if so, what was it?

Answer. They did enter into an agreement; Sloan was to receive fifty arpents of ground, or land, off of the east end of the Motard tract, in consideration of which Sloan was to go to New Orleans with my father as a hand on his keel-boat. (Objected to by Mr. Shepley, on behalf of def'ts, as incompetent and irrelevant.)

Question by same. Did Sloan go down to New Orleans with your father in accordance such contract; and if so, at what time did he go?

Answer. Sloan went down with my father as far as Natchez, Miss.; there we lay some five or six days, and Sloan left my father; my father and Sloan left the city of St. Louis for New Orleans the first of March, 1815.

Question by same. Who went down the river on the keel-boat with your father and Sloan?

Answer. Elijah Smith, sen'r, Jefferson Smith, and Elijah Smith, jun'r, myself, and my brother, James Adams.

Question by same. After you got to New Orleans, where did your father, brother, and yourself go?

Answer. We went to the republic of Mexico.

Question by same. What become of your father?

Answer. He was killed in 1817 in the republic of Mexico.

Question by same. At what time did you return from that trip to the city of St. Louis?

Answer. I think it was in the latter end of the fall of the year 1819.

Question by same. At what time did your brother James return?

Answer He came back, I think, in the month of Janury, 1821.

Question by same. Who held the legal title to the Motard tract in the year 1815, and for some time thereafter?

Answer. David Musick had the legal title to it until the year 1823.

Question by same. Under what condition did he hold it?

Answer. He held it under a sheriff's deed.

Question by same. Was there any understanding between your father and Musick as to that land; and if so, what was it?

Answer. Yes, there was an understanding. Mr. Musick was to hold the land, until the money he had paid out for the land was paid back to him, when the land was to revert back again to my father or to my brother, myself and my sister. (Objected to by Mr. Shepley, as incompetent and irrelevant.)

Question by same. Did you on your return to St. Louis, in the year 1819, have any conversation with David Musick in relation to the right of to redeem the land; and if so, what passed between you and Musick in regard to it?

Answer. In January or February of the year 1820, I had a conversation with David Musick in relation to this land, and he agreed it I would return him his money, he would convey back the land to me, my brother and sister, being the only children of my father, Calvin Adams. (Objected to by Mr. Shepley, as incompetent and irrelevant.)

Question by same. Did you subsequently procure a deed from David Musick for said land, or any part of it; and if so, under what circumstances?

Answer. Yes, sir, I procured a deed for two parcels or tracts executed to me, my brother and sister, one of them being the Motard tract. (Objected to by Mr. Shepley, as incompetent and irrelevant.)

Question by same. Did the deed executed to you for the Motard tract call for the whole of the tracts, or a portion of it?

(Objected to by Mr. Shepley as being improper, the deed being the best evidence.)

Answer. No; we got but two-thirds of the Motard tract, and the whole of the other tract in Jefferson county.

Question by same. Did you visit Musick at his dwelling-house a short time before you procured that deed; and if so, where did Musick live at the time?

Answer. I did visit him a short time before I procured the deed, and he lived out in the Haversaint valley.

Question by same. Did you, on the occasion of that visit, have any conversation with Musick in relation to the claim of Sloan for fifty arpents of the Motard tract of land; and if so, what was it?

(Objected to Mr. Shepley as irrelevant and incompetent.)

Answer. In October, 18 .3, I came home to St. Louis from the mountains. A few days after I had arrived here, I rode out to Mr. Musick, and remained all night; and, in the mean time, I had a conve sation with Mr. Musick, and told him I was ready to pay him the money that my father was owing him; and in the mean time we talked about this claim of Sloan's; I observed to Mr. Musick, that I thought Mr. Sloan had no right to them fifty arpents; Mr. Musick answered me, and said, David, your father and me are bound both under bonds or agreement, that in case Mr. Sloan went with your father down the river, that he was to receive fifty arpents from off the east end of the Motard tract. I then told Musick that the money was ready for him whenever the deed was made out for the land he held in security, being the Motard tract, and the tract in Jefferson county. The old man, David Musick, then asked me if Mr. Sloan did perform the trip with my father; I told him that Mr. Sloan went with us as far as Natchez, and then quit us there by the consent of my father; and my father then did give him a letter to Col. David Musick, but that I did not know what was the contents of it. David Musick further said, that if Sloan should call upon him for the fifty arpents, he would be compelled to make him a deed for it.

(Each and every part of the above answer objected to by Mr. Shepley as incompetent and irrelevant.)

Question by same. Did you ever have any conversation with Charles Mullikin in relation to Sloan; if so, when was it, and what passed between you?

Answer. I had a conversation with Charles Mullikin in relation to Sloan, and I think it was in 1830 or 1831, and I don't know which; Mr. Mullikin come down to my house where I was living, near Mulberry street, and asked if I knew, or ever did know, a man by the name of John Sloan, and wanted to know of me if Sloan owned any land out in this Motard tract; I told him that I believed there was an obligation between Mr. Musick and my father and Sloan, that he was to have fifty arpents, and I told Mr. Mullikin that I thought it was unjust; Mr. Mullikin then told me that he had seen an instrument of writing that was binding on my father and Mr. Musick for fifty arpents, in the Motard tract, to be taken off the east end; Mulligan then made inquiry of me as to whether I knew where Sloan was; I told him I did not, and never had heard from him since we separated at Natchez?

(The whole answer objected to by Mr. Shepley.)

Mr. J. R. Shepley, the solicitor for def'ts, not waiving any objections to the sufficiency, competency, and relevancy of the above testimony, or any of it, proceeds to cross-examine the witness, as follows, viz:

Question by said def'ts' solicitor. You say that David Musick

held the Motard tract under a sheriff's deed; as whose land was it sold by the sheriff?

Answer. It was sold with the understanding, that whenever the money was paid up, the land was to revert to my father, or to my brother, sister, and myself.

Question by same. Do you know whether the land brought enough to satisfy the execution against your father?

Answer. I do not.

Question by same. Was the understanding you speak of about the redemption, between Musick and y'r father, in writing?

Answer. This is more than I know.

Question by same. Why did Musick convey you only two-thirds of the Motard tract?

Answer. Because he told me that the old woman, my mother, was to get her third.

Question by same. Why did he convey you the whole of the Jefferson county tract?

Answer. It was by the consent of my mother.

Question by same. What was the size of the Motard tract?

Answer. I think it was seven by forty arpents, tho' of this I won't be right certain.

Question by same. Did you pay Musick the money; and if so, when?

Answer. I did pay it to him in Judge Leduc's office, (who drew the deed,) in the city of St. Louis, in the year 1823, and at the time I got the deed.

Question by the same. Were the two tracts in one deed?

Answer. Yes.

Question by same. Did it embrace any other land?

Answer. I think it embraced, beside a portion of the commons, of about a thousand acres; it was a head-right, and now claimed as commons.

Question by same. In this conversation with Musick, in which he spoke of an obligation or bond with Sloan, did he speak of Sloan's having it?

Answer. He said that a bond existed by which him and my father was bound to Sloan for fifty arpents in the Motard tract; he did not say that Sloan had the bond.

Question by same. Are you positive about what Musick said—he and y'r father were bound by that bond to convey?

Answer. Yes, sir, I am positive.

Adjourned here by consent until to-morrow morning, 9 o'clock.

Saturday, the 26th Sept., 1857, deposition of David Adams resumed:

Question by Mr. Shepley for def'ts. Was your mother to have a full third of the property held by Musick, referred to by you?

Answer. She was to have a full third in both tracts, but she relinquished her interest in the tract in Jefferson county.

Question by same. Why did you say to Musick that you thought it unjust that Sloan should have fifty arpents off of the Motard tract and east one of it?

Answer. Because I had to pay up the mortgage that was against my father.

(While the com'r was writing the above answer the witness was saying something else which com'r did not understand; and after he had completed the answer, he read it to witness, and asked him if that was his answer. Witness then added, that altho' he had thought it unjust, after Musick had explained to him all about Sloan's claim, he consented that, if Sloan ever come for his interest, he should have it. To this additional part of his answer Mr. Shepley objected, because it was not responsive to his question, and because it had been drawn from witness by the com'r asking if there was anything more to be put in the answer, and Mr. Buckner insisted that it should be written down.)

Question by same. How can you know that the conversation with Mullikin spoken of by you occurred in 1830 or 1831?

Answer. It is by circumstances that I refreshed my mind with that; I think it was in 1830 or 1831.

Question by same. What were those circumstances?

Answer. It was where I was then residing, before I moved down on a piece of ground which the old woman and Duncan had deeded to me, down on Second street; by the old woman I mean my mother.

Question by same. What time was it that you moved down?

Answer. I cannot tell whether it was in 1830 or 1831.

Question by same. Was it immediately after the deed was made to you by y'r mother and Duncan that you moved down?

Answer. No, sir; I don't know exactly how long it was after the deed was given to us before I moved down, but I think the deed was made to us in 1829; but the deed is of record, and will show for itself.

Question by same. Has any one told you of the date of Musick's conveyance, or the time when Musick conveyed to Mullikin?

Answer. No, sir.

Question by same. Has any one asked you about the conversation which you state occurred between you and Mullikin?

Answer. No one, except Mr. Buckner, who asked me if I knew Mr. Mullikin, and if he had ever talked with me about Sloan's claim.

Question by same. When was that?

Answer. I don't know exactly what time it was, tho' I think it was a year or so ago.

Question by same. Before that time had you ever had any con-

versation with any one as to what occurred between you and Mullikin?

Answer. I don't remember of any, except it was with mother and Mr. Duncan; I think I told them of it.

Question by same. If you told y'r mother and Duncan, did you tell them at or near the time it occurred?

Answer. It was a short time afterwards.

Question by same. Can you, after a lapse of some 26 or 27 years, state what occurred at that conversation with any certainty?

Answer. Yes, sir, I can; after having been cheated and swindled out of everything, such things refresh my memory, and I can recollect certain circumstances as far back as forty years.

Question by same. Do you consider your memory very good except as to such circumstances?

Answer. Anything that is to my interest I do.

Re-examined by Mr. Buckner, for Compl't.

Question by Mr. Buckner, for compl't. You say that your recollection is generally good. Is not your recollection, when connected with all the circumstances of the disposal of the Motard tract, good?

(Objected to by Mr. Shepley, on the ground that the question assumes that the witness had stated that his recollection was generally good, which he has not done.)

Answer. My recollection concerning the Motard tract, of transferring, and localities and conversations about the tract, are good.

Question by same. After the death of your father, did not Robt. Duncan and your mother live together as husband and wife?

Answer. They were never married, but they lived together.

Question by same. In your testimony you stated that you thought it unjust that Sloan should get the fifty arpents out of the tract when you had to pay off the mortgage debt; what did you mean by the mortgage debt?

Answer. What I mean by the mortgage debt was the money that Mr. Musick had paid at the sheriff's sale for my father for that land. In this deposition whenever I have spoken of Col. Musick, Mr. Musick, and David Musick, I meant all the time the same man.

Question by same. In the conversation you had with David Musick you say you told him that Sloan went with your father as far as Natchez, and that there Sloan left by the consent of your father, and that he gave him a letter to David Musick; was that statement to David Musick true?

Answer. Yes, sir.

And further deponent saith not.

DAVID ADAMS.

Jas. C. Musick's Deposition.

The following deposition of James C. Musick was taken before the same Benjamin F. Hickman, United States commissioner, at St. Louis, on the 26th day of September, A. D. 1857. And the said James C. Musick, after being carefully examined and cautioned, and sworn to testify the whole truth, deposes and says (viz):

Question by A. Buckner, solicitor for compl'nt. Did you ever know a man by the name of Sloan?

Answer. I saw a man at my father's, many years ago, by that name.

Question by same. What was the name of your father, and where did he live in 1815 and after?

Answer. His name was David, and he resided near Haverssant, in the Haverssant valley, in this county.

Question by same. In what year and what time of the year was it that you saw Sloan at your father's?

Answer. I think it was in the latter part of the summer or the fall of 1815.

Question by same. How long did Sloan remain at your father's?

Answer. He remained one night and until after breakfast.

Question by same. Did you learn the object of Sloan's visit; and if so, what was it?

Answer. It was in relation to some portion of the Calvin Adams tract. It was to obtain a deed, I think.

(Objected to by Mr. Shepley.)

Question by same. Was there any paper executed by your father, or any instrument of writing, to Sloan on that occasion?

Answer. There was, but I cannot say what it was.

Cross-examined by Mr. Shepley, Solicitor for Def'ts.

Question by said solicitor. How old are you?

Answer. I was born 20th May, 1803.

Question by same. What reason have you for thinking that it was in the latter part of the summer or fall of 1815 that Sloan was at your father's house?

Answer. My father was in the army, in the war of 1812, from the spring until June of 1815, and it was after that period, I know, that Sloan was there.

And further deponent saith not.

JAMES C. MUSICK.

J. C. Musick's Deposition.

James C. Musick, being further examined, by consent of A. Buckner and J. R. Shepley, atto's for parties, says:

Question by A. Buckner, for compl't. You have before said that there was a paper or instrument of writing executed by your father to Sloan on the occasion that Sloan visited him and remained *the*

over night; did you see Sloan pay to your father any money at the time said instrument was executed?

Answer. There was a small amount paid, but what amount I don't recollect.

Question by J. R. Shepley, for deft's. Where did your father live at the time referred to?

Answer. In Florrisant valley, about a mile and three-quarters south of the village of Florrisant.

Question by same. Were you standing near your father, or what reason have you to think there was any money paid?

Answer. I was in the room at the time.

Question by same. Did your father leave his place that morning with Sloan?

Answer. He did not, according to my impression.

And further saith not.

JAMES C. MUSICK.

The following depositions of William E. Bain and Wm. W. Ater were taken before Benjamin F. Graves, presiding judge of the Fayette county court, at the city of Lexington, Kentucky, on the seventh day of October, A. D. 1857.

Wm. E. Bain's Deposition.

And said William E. Bain, after being carefully examined, cautioned, and sworn to tell the whole truth, doth depose and say, that he lives a greater distance from the city of St. Louis than one hundred miles. Furthermore, he saith, that he was acquainted with John Sloan, the father of J. Robert Sloan. I knew him in this place, and afterwards in the city of St. Louis, Missouri. He married in this place—Lexington, Kentucky—the daughter of Simon Hickey, and moved to St. Louis, Mo., where I saw him between 1810 and 1815; he was then living in St. Louis, Mo. I saw Mrs. Sloan in St. Louis, where she was living, some time between the years I have mentioned, and her husband had then *gon* away; and I understood her husband died a short time thereafter. She continued to reside in the city of Lexington until a short time since, when she removed to the State of Missouri, and died there. His only children was J. Robert Sloan and Theodore Sloan, the last of whom died some few years since, without ever being married. J. R. Sloan is now living near Boonville, in the State of Missouri. I have been living in Lexington, Kentucky, since the year 1800. John Sloan never returned to this place after I saw his wife in St. Louis, Missouri. I was in St. Louis generally about four months in the year from 1808 until 1821, whilst my residence was in the city of Lexington, Kentucky, and it may have been later than 1815 when I saw John Sloan and his wife in St. Louis last.

WM. E. BAIN.

Wm. W. Ater's Deposition.

The said Wm. W. Ater, after first being carefully examined and cautioned, and sworn to tell the whole truth, doth depose and say, that he lives a greater distance from the said city of St. Louis than one hundred miles.

Furthermore, he saith that he was acquainted with John Sloan, the father of J. Robert Sloan. He removed from Lester, Kentucky, to St. Louis, Missouri, about the year 1814 or 1815. He married the daughter of Simon Hickey, and he had two children, J. Robert and Theodore Sloan. Theodore is dead, and was never married. Mrs. Sloan returned from St Louis, Missouri, to Kentucky about the years 1818 or 1819, and continued to live in Lexington, Kentucky, until within a few years past, when she went to live with her son, said J. Robert Sloan, in the State of Missouri, where she has since died. He never saw John Sloan in Lexington, Kentucky, after the return of his wife, and have always understood he died about that time. Deponent has been living in the city of Lexington, Kentucky, since the year 1805.

WM. W. ATER.

J. Toney's Deposition.

The following deposition of Joab Toney, of the city of St. Louis, was taken before John T. Page, United States commissioner at the said city of St. Louis, on the 26th day of March, A. D. 1858; and said Joab Toney, after being cautioned and sworn to testify the whole truth, deposes and says:

I knew Charles Mullikin, deceased, and I knew his children; I know Napoleon B. Mullikin, one of the defendants; I know the "Motard" tract of land.

Question by Mr. Munford, counsel for plaintiff. State whether you know *if* one John Sloan claiming an interest in that tract; and if so, what you know about it?

(Objected to by Mr. Shepley, counsel for defendants, as incompetent and irrelevant.)

Answer. I do not know that John Sloan claimed any interest in the "Motard tract." I could state, if allowed, what I have heard as to his claiming an interest in it.

Question by same. State if you ever heard either David Musick or Charles Mullikin say that John Sloan was to have an interest in that tract, for making a trip to New Orleans for Mr. Calvin Adams.

(Objected to by Mr. Shepley, so far as the statements of Musick are asked.)

Answer. I can't state. I have an opinion, tho' I can't say how I derived it, that Mr. Sloan did have an interest there. Whether I ever learned anything from Mr. Mullikin, so as to

arrive at an opinion that there was such a claim, I can't recollect now.

(This answer and question objected to by Mr. Shepley, as incompetent testimony.)

Witness adds, that he thinks it more than likely that all the knowledge he has was derived from David Adams. I have had frequent conversations with Charles Mullikin about the land, and frequent conversations with somebody about this very claim; but, as I have stated before, I think it was more than probably with David Adams.

Question by plaintiff's attorney. What is your best impression as to the persons who talked with you about this claim?

Answer. My best impression is, the more I reflect on it, the more surprised I am that it was David Adams.

Question. From what person or persons? State all who you conversed with about this claim of Sloan's.

(Objected to, on the ground that the question has been asked and answered repeatedly.)

Answer. As I have already said, I just have an opinion that Mr. Sloan had such a claim; but as to from whom I got it, I think, and the more I reflect on it the more surprised I am that I heard it from David Adams. David Adams and I had conversations about this very tract of land.

Question. Did you ever hear Charles Mullikin speak of his purchase?

Answer. No, sir; I have heard him speak of owning the land. I never heard him speak of the particulars of his purchase, or from whom he purchased.

Cross-examined by Mr. Shepley, for Defendants.

I first knew this tract in or about 1832. I think it was in the spring of 1832. At the time I first knew it, Elijah Hayden was in possession. I saw it in 1831. It was occupied then by a man named Robbins. I bought out Mr. Hayden, but I don't recollect now when. I purchased Hayden's interest in a title-bond, I think in 1832, and entered into possession immediately, and held down to the time of the partition, in the spring.

(Objected to by Mr. Munford as leading, incompetent, and irrelevant, and as referring to a writing.)

I do not know of Mr. Hayden's holding that land for Mr. Mullikin as well as for himself.

I recollect the partition of the Motard tract, and think it was from 1835 to 1837; but the precise time I cannot tell.

(Objected to by Mr. Munford as referring to a matter of record.)

I know the piece of ground allotted in that partition to Charles Mullikin.

(Objected to as referring to a record, by Mr. Munford.)

Question. How early do you know of Charles Mullikin's having possession of, or exercising acts of ownership over any part of the Motard tract?

(Objected to by Mr. Munford as leading.)

Answer. Ever since the division took place, Mr. Mullikin used to come out there once or twice a week, and I generally saw him when he came there; we frequently had conversations together.

Question by Mr. Shepley for defendants. Did you know of his having possession of any part of the Motard tract before the partition?

Answer. No, sir; I never knew of his possessing any particular part; I only knew of his having a claim to a part of it.

Mullikin occupied the part allotted to him immediately after the partition, and commenced improving; but I cannot say exactly when this was. He put up a fence, then a house; the property has been under lease ever since Mr. Mullikin built there; since time before he commenced making the fence he had men there cutting, grubbing, &c.

I supposed these were Mullikin's tenants; I never heard of any difficulty about them; Mullikin was frequently there.

A man by the name of Fry occupies it as present; I don't know whom he rents of.

Question by Mr. Shepley. Did you ever see Mr. Mullikin out there exercising any acts of ownership there before the partition?

Answer. Mr. Mullikin was there before the partition frequently; he always claimed about fifty acres in the tract.

Re-examined by Mr. Munford.

Before the partition Mullikin had a claim in the tract, but no possession of any particular part.

He never resided there himself after the partition; he was only out frequently, looking after his lots, trimming up the trees, &c.

I heard no contract of lease between Mullikin and any person who was there as a tenant; these tenants were occupying a house of Mr. Mullikin's, but I do not know, of my own knowledge, how they occupied it; then the premises were vacant—the house for a short time; I think it was the cholera season; it might have been vacant five or six months at this time; I think it was later than the cholera season of 1832 and 1833; I cannot state exactly when it was.

Re-cross-examined by Mr. Shepley for the Defendants.

None of the tenants ever told me that he or they held under Mullikin, nor do I know of my knowledge that they were placed there by Mullikin.

I purchased an undivided interest in the Motard tract in 1832, of Hayden; in holding it, I don't know that I had any particular allusion to anybody but myself.

Re-examined by Mr. Munford.

Question. Did you get as much as you expected in the division in partition; or did Mullikin get as much as he claimed?

Answer. I did in that tract; but I lost sixty arpens in another tract, which I expected to get by my purchase from Heyden.

Mr. Mullikin was somewhat disappointed in what he got; he only got two arpens, when, I suppose, he should have got fifty, or thought he should have gotten fifty.

JOAB TONEY.

J. C. Musick's Re-examination.

Re-examination of James C. Musick, held before the said John T. Page, United States Commissioner at St. Louis, on the 2d day of April, 1858, viz:

James C. Musick, of lawful age, being produced, cautioned, and sworn to testify the whole truth, did thereupon depose and say:

From the conversation between Sloan and my father, I understood that Sloan's business was to get a part of the Adams tract of land, on the occasion referred to in my former deposition, when Sloan visited my father's, and remained over night. This was in answer to the following question:

Question 1st, Mr. Buckner. You stated, in your former examination, that on the occasion of Sloan's visit to your father, you learned that Sloan had come for the purpose of getting a deed to a part of the Adams land; from whom did you learn this?

Question 2d by same. Do you know that your father cultivated that tract after Adams (Calvin Adams) left St. Louis for the South?

Answer. I knew that part only from the negro men sent there, as they stated, by my father; my father was in the army.

(The above, both questions and answers, is objected to by Mr. Shepley, for the defendants, as incompetent and irrelevant.)

Cross-examined by Mr. Shepley.

My father returned in 1815. It is my impression that this conversation took place in the fall of that year, but I would not be certain of it. I recollect the substance of the conversation; my recollection was kept alive by subsequent circumstances; but I don't recollect the conversation verbatim.

JAMES C. MUSICK.

J. R. Sloan's Deposition.

The following deposition of J. R. Sloan was taken before Benj. Tompkins, judge of the Cooper court of common pleas, in and for the county of Cooper, State of Missouri, at the city of Boonville, in said State of Missouri, on the 12th day of April, A. D. 1858. And the said J. R. Sloan, being first carefully examined and cautioned, and sworn to tell the whole truth, deposes and says,

that he lives a greater distance from the said city of St. Louis than one hundred miles. Furthermore he saith, in answer to question, to wit:

Question No. 1. Where do you now reside?

Answer. I reside in the Cooper county, State of Missouri.

Question No. 2. Where were you born, and where did you reside until your removal to Missouri, and when did that take place?

Answer No. 2. I was born in the city of St. Louis; I lived in the city of Lexington, Kentucky, from about 1818 till 1853, when I removed to the State of Missouri, where I have resided since.

Question No. 3. What was your father's name?

Answer to question No. 3. John Sloan.

Question No. 4. Are you or not the only child now living, and his only heir?

Answer to No. 4. I am the only child living, and only heir.

Question No. 5. What was your mother's maiden name, and when did she die?

Answer to question No. 5. My mother's maiden name was Bridget Hickey. She died in the month of August, 1854.

Question No. 6. Did she or not reside in the same place with you till her death?

Answer to No. 6. My mother resided with me from 1835 till 1854, when she died.

Question No. 7. What is your age?

Answer to No. 7. I am 44 years old this day.

Question No. 8. Did your father ever remove to and reside in St. Louis, Missouri; if so, when and for what time?

Answer to No. 8. I must answer from information from my mother, who always told me that my father and herself removed from Kentucky to St. Louis, Missouri, where I was born on the 13th April, 1814. When they left Kentucky for Missouri I cannot state. I think my mother left the State, for her father's, in Kentucky, in 1817 or 1818. My father left the State in 1818 or 1819. This I state from what I have always understood from my mother's grandfather and grandmother. I have no recollection of my father.

Question No. 9. When and where did he die?

Answer to No. 9. From my best information my father died in the now city of Natchez, in the now State of Mississippi.

Question No. 10. Did you or not employ counsel to bring suit for fifty arpens of land, claimed by you in right of your father? if so, state when, whom, and why suit was not commenced, as far as you know.

Answer No. 10. In January, 1838, I went from Kentucky to St. Louis, Missouri, where I consulted Mr. Gamble about my claim to fifty arpens of land, claimed in right of my father. He examined

my papers and heard what I had to say for several days, and then told me that he was engaged by other parties in a suit or suits then pending, which he thought conflicted with my claim at that time, and declined to act as my attorney, unless he found out that he could do so afterwards without conflict with previous engagements with other clients. He said he would act for me if he could, and promised to correspond with me on the subject as the causes progressed, then pending, in relation to the title of the tract of land, out of which I claimed the fifty arpens af'sd. The title thereto was, or had been, I think, then pending in the Supreme Court of the United States, at Washington ; this, however, I may be mistaken. I then went home, without speaking to any other lawyer about my claim. After waiting to hear from Mr. Gamble some time, (I cannot say how long,) I went to St. Louis and employed a Mr. Logan Hunton to attend to my cause, and he undertook to do so. I had full conversation with him about my claim, and I left with him my papers pertaining thereto. He kept them for two or three years, when I went to St. Louis, and seeing that he was doing nothing, I took the papers from Mr. Hunton and gave them to Mr. B B. Dayton, who undertook my cause. I gave him my papers and consulted fully with him on my claim. He undertook to attend to it faithfully ; but he, like Hunton, done nothing for several years, when, seeing that he was doing nothing for me, I gave Mr. R. Pindell an order for my papers, &c., which I understood he got. The periods when I employed Hunton and Dayton I cannot state, but they took place in immediate succession, and continued till I gave Mr. Pindell an order for them, and when that was I cannot now state. Why the persons so employed did not act I do not know, but I rather think they had interests adverse to me.

Question No. 10 (again). Have you or not made careful and diligent search for a deed from David Musick to John Sloan for said fifty arpens of land, or caused such inquiry to be made ; if so, what was the result? Was the deed found?

Answer No. 10 (second). I have. I have never been able to find any deed from David Musick to John Sloan.

Question No. 11. Was or not the land claimed by you the same fifty arpens excepted from sale in a deed made by David Musick and wife to Robert Duncan, on the 19th day of January, 1819, and recorded in St. Louis county?

Answer to No. 11. It was.

Question No. 12th. Did you ever have a conversation with Charles Mulligan, the claimant of said fifty arpens, under a deed from said Musick and wife, about his purchase of said land? If so, state that conversation.

Answer No. 12. I had, in January, 1838, when I was in St. Louis. I went to the residence of Mr. Charles Mulligan, who

I understood claimed the same land that I did under Musick, by deed from Musick and wife. I told him my name and business in St. Louis; we talked about our claims for an hour or two; he said he had purchased the land from Musick, with said Musick's declaration that he had previously sold the same land to one John Sloan, and had given said Sloan a title bond for the same fifty arpens of land; that said Sloan had left the country, and that he had never heard anything of him or his heirs since, and that he so bought it. He spoke about the tract out of which the fifty arpens were to be taken, being then in litigation, and the uncertainty of success, but he thought the best way was, and so proposed, that he and myself should unite our claims or act in such a legal manner as should best advance the claim of either of us to the said fifty arpens of land, and then we were to divide equally between us what was recovered, after paying the expenses. I declined his proposition, and left him, and have not had any conversation with him since.

Question No. 13. Did he or not, in the course of it, state that he knew John Sloan was the purchaser of the fifty arpens mentioned as above in the deed from Musick and wife to Duncan before he *purched* from Musick the same lands?

Answer No. 13. He did.

Question No. 14. When and where did that conversation take place?

Answer No. 14. In 1838, at his residence in St. Louis.

Question No. 15. What has become of Mr. Morton?

Answer No. 15. Mr. Morton died in 1856.

Question No. 16. Have you or not sold and conveyed your interest in said land, for a valuable consideration, to R. Pindell?

Answer. I have.

Question No. 17. Have you any interest in the result of this suit?

Answer No. 17. I have not.

And further saith not.

J. R. SLOAN.

J. R. Sloan's Re-examination.

The following deposition of the aforesaid J. R. Sloan was taken before the aforesaid Benj. Tompkins, judge of the Cooper court of common pleas in and for Cooper county, State of Missouri, on the 1st day of October, A. D. 1858, and said J. R. Sloan, after being sworn and examined, deposed and said, viz:

Question 1st, by plaintiff's att'y. Where do you reside?

Answer. I Cooper county, Missouri.

Question No. 2. Where were you born and where have you lived; if at any time in St. Louis, Missouri, where was it?

Answer to No. 2. From what my mother always told me, I was

born in St. Louis, in the then Territory of Missouri, on the 13th of April, 1814, and lived there till the year 1817 or 1818, when she removed to the State of Kentucky, taking me with her.

(To the above question No. 2 and to the answer thereto the defendants object, because the question is improper and leading, and the answer is hearsay.—ADAMS, for def'ts.)

Question No. 3. After your removal to Kentucky, as stated in your answer to question No. 2, how long did you reside there; if you left that State, when did you leave, and where did you remove to?

Answer to No. 3. I remained a resident of Kentucky from the time I went there with my mother, as stated above, till the month of November, 1853, when I removed to the State of Missouri, where I have lived ever since.

Question No. 4. What was your father's name?

Answer to question No. 4. I have always understood from my infancy, from my mother's grandfather, grandmother, uncle, and other near relations, also from the record in my grandfather's and mother's family bible, that my father's name was John Sloan.

(The defendants object to question No. 4 as improper and irrelevant, and to the answer thereto as hearsay and incompetent in other respects.—ADAMS, for def'ts.)

Question No. 5. How many children had your father—how many are now living?

Answer to No. 5. My mother has always told me she had four children by my father, John Sloan, all older than myself; two died while infants; the oldest died in 1850; I do not recollect the two infants that died. I am now the only child of John Sloan living that I ever knew of; my brother that died in 1850 died unmarried, and without lawful children that I ever knew of.

(The defendants object to question 5 and the answer thereto, because the question is irrelevant and incompetent, and the answer is hearsay.—ADAMS, for dfts.)

Question No. 6. What was your mother's maiden name; is she now living; if not, when did she die?

Answer. My mother's name was Bridget Hicky before marriage, as I have always been told by her and all my relations, and what I have seen written in my grandfather's family bible; she died at my house in the State of Missouri, in August, 1854.

(The defendants object to question No. 6 and the answer, because the question is improper, and the answer is hearsay, and otherwise illegal and incompetent.—ADAMS, for def'ts.)

Question No. 7. Did she or not reside in the same place with you till her death?

Answer to No. 7. She resided in my family from Sept., 1835, till her death in August, 1854.

(The defendants object to question No. 7, because it is leading

and objected before it was answered, and objects to the answer as illegal.—ADAMS, for def'ts.)

Question No. 8. What is your age?

Answer to No. 8. Forty-four years 13th April last.

Question No. 9. Where did your father reside? if at any time in St. Louis, when, and how long?

From information from my mother and grand parents, who raised me, my father and mother resided in St. Louis for some few years before my birth till a short time before his death in 1818 or 1819. He died while on a trading expedition to the South, in the city of Natchez, as I also have always understood from my parents.

(The defendants object to question No. 9 as illegal, and the answer thereto as hearsay.—ADAMS, for def'ts.)

Question No. 10. When and where did your father die?

Answer to question No. 10. Answered in answer to question No. 9.

(This question No. 10 objected to by defendants, and the answer thereto is objected to as hearsay and illegal.—ADAMS, for def'ts.)

The further taking of this deposition, for want of time, is adjourned till to-morrow morning, 9 o'clock.

BENJ. TOMPKINS,
Judge of Cooper Court Common Pleas.

Oct. 2d, 1859, 9 o'clock. The taking of J. R. Sloan's deposition resumed, pursuant to adjournment.

Question No. 11. Did you or not at any time employ counsel to bring suit for fifty arpens of land claimed by you in right of your father? If so, state when, whom did you employ; and if suit was not commenced, state the reason why, as far as you know.

(The defendants object to question No. 11 as being leading and illegal, and as referring to matters irrelevant and incompetent, and the defendants object any evidence about attempts to bring suit, and to all statements and evidence about witness claiming land, and to all parol evidence about claims to the land in controversy, as incompetent and irrelevant.—ADAMS, for def'ts.)

Answer to question 11. In January, 1838, I went from Kentucky to St. Louis, Missouri, when and where I consulted Mr. Gamble about my claim to fifty arpens of land, claimed in right of my father; he examined my papers and heard what I had to say for several days in relation thereto; he then told me that he was engaged by other parties in a suit or suits then pending, which he thought conflicted with my claim at that time, and declined acting as my attorney, unless he found out that he could do so afterwards without conflict with previous engagements with other clients. He said he would act for me if he could, and promised to correspond with me on the subject as the causes progressed then

pending, in relation to the title of a tract of land out of which I claimed the fifty arpens aforesaid; the title thereto was, or had been, I think, pending in the Supreme Court of the United States at Washington; though where it was pending at that time, I may be mistaken. I then went home without speaking to any other lawyer about my claim; after waiting to hear from Mr. Gamble some time, I cannot say how long, I think some 3 or 4 years, I went to St. Louis and employed a Mr. Logan Hunton to attend to my case, which he undertook to do. I had a full conversation with him about my claim, and left with him my papers pertaining thereto. He kept them for two or three years, and I again went to St. Louis, and seeing that he was doing nothing for me I took the papers from Mr. Hunton and gave them to Mr. B. B. Dayton, who undertook my cause. I gave him my papers and consulted fully with him about my claim. He undertook to attend to it faithfully; but he, like Hunton, done nothing for several years, when, seeing that he was doing nothing for me, I gave Mr. R. Pindell an order for my papers, &c., which I understood from him he got. The period when I employed Hunton and Dayton I cannot exactly state; but they took place in immediate succession, and continued until I gave Mr. Pindell an order as aforesaid; but when I gave the order to Pindell I cannot state. Why the persons so employed did not act for me I do not know, but I rather think they had interests adverse to me.

(The defendants object to the above answer to question No. 11, for the reasons stated in their objection to the question, and for the further reason that the answer is not and was not a detail of facts by the witness, but was read by the witness from a copy of a former deposition given by him, and was written down by the officer as it was read out from said former deposition, as will be seen by reference to said former deposition now on file in this cause.—ADAMS, for deft's.)

Question No. 12. Please state if your answer to question eleven is made upon your own knowledge, or is the same founded upon, or in any way derived from, what you have previously stated in your former deposition?

(The defendants object to question No. 12 as illegal and incompetent, and as leading.—ADAMS, for def'ts.)

Answer to question 12. It is from my own knowledge *a true*, notwithstanding at this time I have read my former deposition.

Question No. 13. Have you any knowledge of the existence of a deed from David Musick to John Sloan for said fifty arpens of land? if so, state your knowledge of its existence, if you have made careful and diligent search for said deed, or caused such inquiry to be made, and what was the result.

(The defendants object to question 13, as leading and incompetent. They object to anything being said about the loss of a deed,

or about searching for same, until due proof is first made of its execution.—ADAMS, for d'f'ts.)

Answer to question 13. I have no personal knowledge that there ever was a deed from David Musick to John Sloan for the land aforesaid; I have examined, and had examined by lawyers and others, the offices in St. Louis, and have not been able to find any.

Question 14. Was or not the land claimed by you the same fifty arpens exempted from sale made by David Musick and wife to Robert Duncan, on the 19th day of January, 1819; if there was any such deed, where was the same recorded?

(The defendants object to question 14, because it is leading, and refers to matters about which the witness has no right to speak. They object to anything being said about land claimed by witness. They object to the witness saying anything about the contents of a deed which he never saw; and they object, because there is no proof of the execution, or existence of any such deed; and they object, because the question and answer are otherwise illegal and incompetent.—ADAMS, for def'ts.)

Answer to question 14. It is the same fifty arpens excepted in the deed from Musick and wife to Duncan that I did claim; I think I have seen a deed from Musick and wife to Duncan, of record in one of the offices in St. Louis, wherein Musick excepted from sale fifty arpens of land, as having been previously sold to John Sloan, and a title bond given therefor; I have also seen and had in my possession certified official copies of said deed, which I gave to my lawyers previously mentioned; of the original deed, or of its execution, I know nothing, and only speak from the record, certified copy, and conversations I have had with lawyers on the subject.

Question No. 15. Have you at any time had a conversation with Charles Mulligan, the claimant of said fifty arpens, under a deed from said Musick and wife, about his purchase of said land? if so, state the conversation.

(The defendants object to question 15, because it is leading, and because it assumes the existence of facts not before proved, and because it is irrelevant and otherwise illegal.—ADAMS, for d'fts.)

Answer to question 15. When I went to St. Louis, in Jan'y, 1838, after having conversations with Mr. Gamble, who informed me that Charles Mulligan claimed by deed from Musick and wife the same fifty arpens that I did for myself, mother and brother, I went to the residence of Mr. Charles Mulligan, when I had a lengthy interview with him in relation to my claim of the fifty arpens aforesaid, which I understood he also claimed. I told him my name, and whose son I was. He then told me that he had bought the land from Musick, knowing from said Musick that he had previously sold it to one John Sloan; that he and Musick both thought, that as Sloan had never been heard of since he left St. Louis, that he was dead, and knew not where his heirs were. At

the time Musick had sold to him, Mulligan, Musick told said Mulligan that he had sold to one John Sloan, and given him a title bond therefor, and that he, Mulligan, so bought it, thinking the probabilities were that Sloan, or his heirs, would never appear to claim it. He, also, told me that the survey of the land in which this fifty arpens was included, contained some 1,400 acres, and that the title to the whole survey was in litigation, and that there had been a decision in one of the courts, by which the fifty arpens would probably be reduced to seventeen arpens, even if he gained his claim which was then in litigation. He at that time proposed to me to join our claims, or act in such a legal manner as would best promote or secure the recovery of the fifty arpens, or whatever portion could be gained; and after the case was decided, if we succeeded, we should divide the land after paying the expenses, which proposition I declined accepting.

(The defendants object to the answer to question 15, because the question itself is leading and illegal, and because the answer is irrelevant, illegal, and incompetent.—ADAMS, for d'f'ts.)

Question No. 16. Did he or not in the course of said conversation state that he knew that John Sloan was the purchaser of the fifty arpens mentioned as above, in the deed from Musick and wife to Duncan, before he purchased from Musick the same land?

(The defendants object to question No. 16, because it is leading, and because it is otherwise illegal and incompetent.—*Answer*, for d'f'ts.)

Answer to question 16. He then and there admitted that previous to, and at the time of his purchase, he knew that Musick had previously sold the same land to John Sloan, and given him a title bond therefor.

(The defendants object to the answer to question No. 16, because the question is leading and illegal, and the answer is incompetent and illegal.—ADAMS, for def'ts.)

Question 17. When and where did that conversation take place?

(Question 17, and the answer thereto, is objected to by defendants, because it is illegal and improper.—ADAMS, for d'f'ts.)

Answer to question 17. The conversation took place in the month of January, 1838, at what I suppose to be the residence of Mulligan in the city of St. Louis.

Question No. 18. What has become of Mr. Morton?

(The defendants object to question No. 18, and to the answer thereto, because they are irrelevant and incompetent.—ADAMS, for d'f'ts.)

Answer to question 18. George W. Morton died in December, 1856, at my residence in Cooper county, Missouri.

Question 19. Have you or not sold your interest in said land for a valuable consideration; if so, to whom?

(The defendants object to question No. 19, because it is leading

and otherwise incompetent, and object to the answer as illegal and incompetent.—ADAMS, for d'f'ts.)

Answer to question 19. Yes, I have sold it to Richard Pindell.

Question 20. Have you any interest in the event of this suit?

Answer to question 20. I have none.

Cross-examined.

Question by def'ts, No. 1. You have stated that in the record of the deed from Musick and wife to Duncan, and in the certified copy of said deed which you delivered to your attorneys, 50 arpens of land was excepted, as having been previously sold to John Sloan, and in which deed you say it was recited that a title bond was given for said 50 arpens to said John Sloan; will you state how said fifty arpens was described in the record of said deed or in the copy you had?

Answer to question 1, by def'ts' att'y. I will now say, according to my best recollection, that fifty arpens of land in the deed from Musick and wife to Duncan were excepted, upon reflection since this question has been put me; I say, according to my best recollection, that John Sloan's name was not mentioned, but am positive the deed states that he, Musick, had previously sold it, but am not certain that any recitation was in the deed about a title bond to John Sloan, upon the subject of how the fifty arpens were described. I can only say this, that the said fifty arpens was to be taken off of the east end of the Adams tract or survey.

Question by d'f'ts, No. 2. Was there any recital in said deed or in the record or copy thereof from Musick and wife to Duncan about a title bond; was the word "title bond" mentioned in said deed; and if so, to whom was the title bond given as recited in deed or in the record or copy thereof?

Answer to question 2, by d'f'ts. I do not know the exact words, but I know that there was a reference to a previous sale; I would not say that the word title bond was or was not mentioned in that deed, but I am inclined to think it was not.

No. 3 question by same. Why did you state in your examination in chief that the record of the deed from Musick and wife to Duncan referred to John Sloan—that is to say, to a previous sale to John Sloan?

Answer to question No. 3. Because I believed it at that time.

Question No. 4 by same. What induced you to seek an interview with Charles Mullikin in January, 1838, about the land in controversy?

(The plaintiff's' counsel objects to the next preceding question, because the same is improper and impertinent.)

Answer to question No. 4. After having a conversation with my attorney, Mr. Gamble, I thought it was to my interest to go and see him, and I did so. I learned from Gamble that Mulligan claimed the fifty arpens.

Question 4, by same. What object or purpose did you expect to accomplish by said interview?

Answer to question 4. The object was to get the property, and know as much about it as possible. A short time before that I was a minor, and I wished to ascertain what my interest was in the claim, and what his interest was, and how he claimed.

Question 5, by same. Had you any idea that Mullikin would, on your request or application, give up his claim, and did you seek the interview with any such hope?

Answer to question 5. I do not know that I did at that time.

Question 6, by same. Have you not stated that one of your objects in seeking the interview with Mullikin was to get the property? How did you expect to accomplish that object by an interview with him?

Answer. When I went to see him I had no definite plan laid down and wanted to hear what he had to say about it, and wanted to know what might turn up for my benefit from what he had to say.

Question 6, by same. Did any one advise you to have the interview with Mullikin; if so, who gave the advice?

Answer to question 6. It is probable that Mr. Gamble advised me to see Mr. Mulligan.

Question 7, by same. For what purpose did Gamble advise you to see Mullikin?

Answer to question 7. The reason, if he did advise me, was, that Mulligan had a conflicting claim. After having advised with Mr. Gamble, either from his advice or otherwise, I went and had the conversation with Mulligan.

Question 8, by same. Did you ever relate or tell the conversation you had with Mullikin to any one before the commencement of this suit? if so, to whom?

Answer to question No. 8. I have no distinct recollection of telling any one until I returned to Kentucky. I have very little doubt I told Mr. Gamble what conversation took place between us. After I returned to Kentucky I have no doubt I told it to my family and immediate friends, including some legal ones. I have on repeated occasions to my friend, and probably others, Richard Pindell, spoke of the conversation had with Mr. Mulligan long years previous to my conveyance to him of my interest in 1856.

Question No. 9, by same. Why did you repeat that conversation so often to Richard Pindell?

Answer to question No. 9. Richard Pindell and myself were warm personal friends; from boyhood he was my associate and confidant; my security on personal and official bonds, and in whom I had unbounded confidence as a gentleman and a legal adviser.

Question 10, by same. Was there anything in the conversation you had with Mullikin that induced you to repeat it so often to Richard Pind*le*? if so, state what it was.

Answer to question No. 10. I considered that the whole conversation was important and I repeated it, not knowing, legally, how important it might be.

Question 11, by same. Why did you consider it important? Did you expect it would be used as evidence in your own favor; and if so, by whom was it to be testified to?

Answer to question 11. To the best of my recollection I thought at the time that his conversation in regard to his knowledge of a previous conveyance by Musick, to another, was a matter of some importance, provided it could be come at in a legal form in the course of litigation. I thought it was possible it could be, as such things in Kentucky then existed as bills of discovery. I could not say that I had any definite plan by which I could use it.

Question 12, by same. Was not Charles Mullikin, the ancestor of the defendants, and with whom you had the conversation, dead long before you conveyed to Pind*le*; and if so, how could you use a bill of discovery?

Answer to question 12. I did not hear Mulligan was dead until at or about the time of my conveyance to Pindell; I am confident that I did not hear of his death previous to that time.

Question 13. What induced you to convey to Pindell, and what consideration did you receive?

Answer to question 13. Mr. Pindell was my security in Kentucky, and had money to pay for me as such; I had no other mode of indemnifying him, and as the claim had been standing for many years, I conveyed it to him in full consideration of fifteen hundred dollars, being as near as we could then ascertain the amount he had paid as my security.

Question 14, by same. Did Pind*le* tell you that without your evidence there would be no recovery, or anything to that effect, or in reference thereto?

Answer to question 14. I made the conveyance to Pindell I think about 1st June, 1856, when I met him in the city of St. Louis. It had been near about three years since I had seen him, and in a conversation with him in relation to what he had paid for me, previous and subsequent to my removal from Lexington, Kentucky, about 1st of November, 1853, he stated he had paid about fifteen hundred dollars. He did not dun me for the money, but the conversation was from interrogatories from me to ascertain the amount of my indebtedness to him. I then told him my condition in pecuniary affairs; that it was hopeless for me to pay him. I told him if he would take my claim for the debt I owed him I would deed it to him and play quits. At that time there was nothing said by Pindell, so far as I recollect, about my being a witness, or previous to that time.

Question 15, by same. Did you have any idea at or before the time of the conveyance, that your testimony would have to be used to obtain a recovery; if so, who told you?

(Plaintiff objects to the preceding question because the same is illegal and incompetent, and the answer thereto.—DRAFFEN, att'y for pl'ff.)

Answer to question 15, by def'ts. I had no idea of being a witness at the time of the conveyance, or before it, or that my testimony would be needed.

Question 16, by same. Who first told you, and when were you so told, that your evidence would be needed in this suit?

(Plaintiff, by his counsel, objects to question 16 because the same is illegal and incompetent, and also to the answer thereto, and every part thereof.—DRAFFEN, att'y.)

Answer to question 16. Pindell informed me by letter in December, 1856, that he would need my evidence, and he afterwards told me the same in Lexington, Kentucky, in January, 1857.

Question 17, by same. Did Pindell tell you what he wanted you to testify to, or in any way call your attention to the points he wanted you to testify about?

Answer to question 17, by def'ts. I don't think he did in the letter. I think he did in the conversation in January, 1857, and that he said it was important to take my deposition in relation to the conversation with Mulligan.

Question 18 by same. *I* what part of the city of St. Louis did Charles Mullikin reside in 1838, at the time you had that conversation with him?

Answer to question 18 by def'ts. I was a stranger in St. Louis then, and stopped at the City Hotel, which is now *know* by the same name. Mulligan lived below the Catholic Cathedral, a short distance from there, not far from Barnum's present hotel.

Question 19 by same. What time of day was it you had the conversation with Charles Mullikin, and was there any one present; if so, who?

Answer to question 19 by def'ts. It was about dinner; they were *a* dinner. There was a female, who I took to be his wife, who was present when I came, and may have been present when the conversation took place; I do not recollect whether she was or not?

Question 20 by same. Do you pretend to state with any particularity a conversation that took place more than twenty years ago?

Answer to question 20 of def'ts. Some things I do.

Question 21. Do you state positively that Mullikin told you that at the time he bought, Musick told him, Mullikin, that he had previously sold the land to Sloan?

Answer to question 21. Yes.

Question 22 by same. Did not Mullikin in that conversation tell you that he had been told by David Adams, after he had bought

from Musick, that Musick had sold to Sloan, and gave Sloan a title bond, instead of saying that Musick so told him?

Answer to question 22 of def'ts. I don't think he did.

Question 23 by same. Did Mullikin in that conversation tell you what induced him to buy the land if he knew it had been previously sold?

Answer to question 23 of def'ts. I don't recollect that he stated what inducement more than I have given in a former answer.

Question 24 by same. Have you not a copy of your former deposition, and was it not furnished to you by the complainant or his attorney, with instructions to embody it in this deposition?

Answer to question 24 by def'ts. I have a copy, or what purports to be a copy, of my former deposition, forwarded to me by Richard Pindell, stating that when my deposition was retaken, that he or his attorney would make it a part of the new deposition.

Question 25 by same. Have you not used that copy of your depositions in making your answer to the questions by complainant, and have you not read parts of it as your answer to questions or to a question propounded by complainant in this deposition??

Answer to question 25 of def'ts. I think that I answered all but one question, from my recollection; and that one, I read my answer from former deposition. But I answered all from my recollection; I now say *now* that my answer to that one question is my recollection, notwithstanding I read from former deposition.

Adjourned, for want of time to conclude, until Monday, Oct. 4th, 1858, o'clock a. m.

BENJ. TOMPKINS, *Judge.*

J. R. Sloan's examination resumed Oct. 4, 1858, 8 o'clock a. m.

Question 26 by def'ts' att'y. You have stated that you have no interest in the event of this suit; do you not mean pecuniary interest; are not all your feelings and prejudices in favor of complainant, and do you not feel a deep solicitude about complainant's success?

Answer to question 26 of def'ts' att'y. Being a friend to plaintiff, I would feel pleased that he should gain this or any other cause that was just, and I do believe this to be a just cause on his part.

Question 27 by same. Was there ever any administration on John Sloan's estate? If so, state when and where administration was had, and who was his administrator or executor.

Answer. There was; I administered as administrator of John Sloan in the month of January, 1838, in St. Louis, in the State of Missouri; it was done during my first visit when I first conversed with Mr. Gamble; and further this deponent saith not.

J. R. SLOAN.

R. Pindell's Affidavit as to search for lost Deed.

The following affidavit of R. Pindell was filed on the 13 April, A. D 1858, viz:

STATE OF KENTUCKY,
Fayette County.

This day personally appeared before me, Ben. F. Graves, presiding judge of the Fayette county court, Richard Pindell, and made oath, that he is the complainant in a suit in chancery against Napoleon B. Mullikin and others, now pending in the circuit court of the United States for the district of Missouri; that he has made diligent search and inquiry for the deed referred to in said bill of complaint, and therein charged to have been made by David Musick to John Sloan for fifty arpens of land; that he has caused a careful examination to be made of all the papers which were in the possession of the widow and heir of said Sloan; that he has personally, and by agent and attorney, made careful inquiry for said deed, among the persons with whom he ascertained the said John sloan to have been upon terms of intimacy during his stay in the city of St. Louis; that he has also made the same inquiry and examination in the city of Natchez, Mississippi, among persons with whom he then ascertained said Sloan to have had business and intercourse; that he has been so far unable to find said deed, and states that the same is lost, as far as at present he has been able to ascertain.

R. PINDELL.

Lexington, Ken., April 8th, 1858.

Sworn to and subscribed by R. Pindell, before me, this 8th day of April, 1858.

BENJAMIN F. GRAVES, [L. S.]
Presiding Judge of the County Court
for Fayette County, Kentucky.

STATE OF KENTUCKY,
Fayette County, sct.

I, James A. Grinstead, clerk of the county court for the county aforesaid. do certify that Benjamin F. Graves, whose name and genuine signature appears to the foregoing certificate, is now and was at the time of signing the same, presiding judge of our said court, duly elected, commissioned and qualified, as prescribed by law, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at office, in the city of Lexington, this 8th day of April, 1858.

[L. S.]

Att.: JAMES A. GRINSTEAD,
C. of C. C.

Confirmation to Jos. Motard's Representatives.

Defendant's Papers.

Claim.—Calvin Adams claims 400 arpents of land, &c. Also 1,340 arpents of land, situate in the district aforesaid, (St. Louis,) by virtue of his settlement, and as assignee of Patrick Lee, who was assignee of Moutard.

See Book B, p. 477.

Adams' 3o Claim.

Al Señor Carlos Dehault Delassus, Cor'l de las Rea's exercitos y ten'te de govern'or de este alta Louisiana. Calvin Adams, recino de esta villa de San Luis de Illinois en la myor forma que haya lugar de derecho y con el devido respecto a V. S. expone que con fecha de 7 de Noviembre, 1800, adquirio de Don Patricio Lee, como siste arpanes de tierra situados en el sitio llamado le que de sague, provemiente del defunto Don Joseph Motard, y como la d'ha tiena no ha sido Aprada el suplicante implora vuestra justicia para que se digna ordenar el Sor. Agrimensor de esta alta Louisiana el apro y que se le forme plano figurativo para su satisfacion gracia que espera muner a N. cuya vida consuve el Altesimo muchos anos. St. Luis, 20 de Enero, de 1804. Sea parado a Dn. Antoine Soulard, para que le de el correspondiente complimiento.

[*For plat see original, page* 105.]

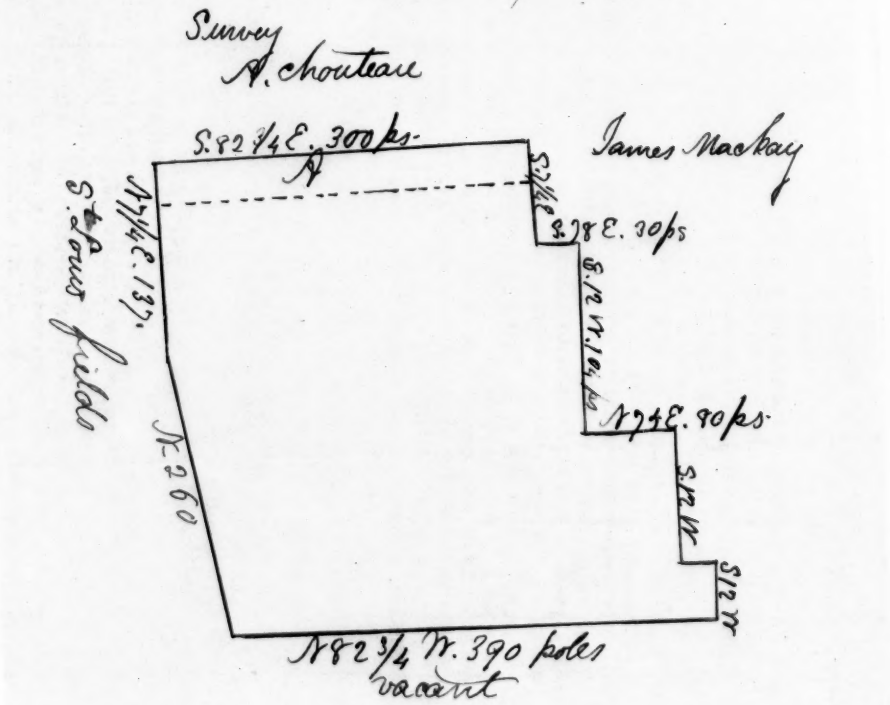
I do certify, that the above plat represents one thousand and three hundred and forty arpents of land, French measure, situate on Mill creek, at a place called Motard's plantation, district of St. Louis, Territory of Louisiana, and surveyed by me at the request of Calvin Adams, who claims the same as his right of settlement, by virtue of an act of Congress passed respecting such claims, on the second of last March, as also by virtue of a purchase made by him of said Motard for a part of the above said claim or tract. In consequence of which purchase, the said Adams conceives himself entitled to cut the lines of Auguste Chouteau's land and take fifty-one arpens of land out of the same, which, at his special request, I have surveyed and included in the above plat, and which is comprehended in the space between the north line of the above plat and the dotted line, and is marked and distinguished by the letter A, and forms a part of said quantity of one thousand three hundred and forty arpents.

Given under my hand, at St. Louis, the 16th November, 1805.

JAMES MACKAY, *D. S.*

In virtue of the above plat and certificate of survey, performed by the deputy surveyor, James Mackay, in behalf of Calvin Adams,

№ 217. Pindell vs. Mullikin — Fa: 105. —



said tract containing 1,340 arpents, French measure, or 1,146 acres 40 poles, English measure. I have recorded the whole at the fo. 30 of the book D, No. 28.

St. Louis, 16 of January, 1806.

ANTOINE SOULARD, *S. G. T. S.*

Deed.

En la villa de St. Louis de Illinois a los siete dias del mes de Noviembre del ano mil ochocientos a defecto de escribano publico en esta referida: ante mi Dn. Carlos Dehault Delassus ten'te cor'l de las reales ex'tos y ten'te de gob'or de esta alta Louisiana y en presencia de los testigos de assistencia Dn. Pedro Lafillard, Joseph Hortiz estubo presente en su persona Dn. Joseph Motard, vecino de esta sus dicha el gual por estes presentes declara y confiesa haver y vendido, redido, transportado y abandonado tante para ahoca como para siempre y promete haver gozar y preservar de todos dendas, duarios, hypotuas iriciones, substitutiones y generalmente todo lo que siete predicsen a Patricio Lee vecino y igualmente del comissio de la ante dicha villa a qui presente stipulando, acceptando y adquiriendo para el y sus herederos a otros que representan su derecho son terreno de ciente y veinte pise de funto y ciente y cinquenta de propendor situado en esta villa de Sn. Luis, y linda de mi lado con el terreno del adquiriente del otro a la segunda calle de esta referida villa su primea fronte a otra calle de traviera que separa et de Dn. Gregori Surpy, y por detras al terreno de Luis Bompart alias Laflor, todo interado son estacas de sitio y en al dho. terreno se halta construida una casa viexa de treinta pres en largo y veinte y como de ancho y una ersina que tiene a la casa todo eronte son Tuxamanes y planshe ada alto y baxo todo de legual el Sor. adquiriente declare haver viste y visitado de lo que se du por contenti y satisfecho sin nada sitinues ni resurviase adquiriendo signese y confirme a las leyes por el precio y survia de sisticientos pesos payadere al cabe a le mi ano de este date en dinero conciente de esta pays, cuya suma el referido Dn. Patricio Lee si obligea a satisfacer a la orden y disposicion del Sr. Dn. Josef Motard en el termino prescipte, y renuncia a la numerata pecuniaya todos las de Jerethos de sa favor un la ley general que lo defiendo en forme igualmente el anted'mo Josef Motard vende y libra en este mismo dia y baxo las condiciones ante dichs. al referido Dn. Patrick Lee, como siste arpanes de tierra de fiente y como quarante de profondor situados en la praderia que llaman el Cul de saque contra la rivera del molino de Dn. Augustin Chouteau sin que el adquiriente pueda impedro a las derechos de esta dh'o rivera (y) a su proximidad al referido Chouteau en la Sta. Tiuro se haltan construidas algunas corsillas de para consideration, las quales y el todo referido adquiriente declara haver viste y visitado y se du igualmente, por satisfecho mediante

el puerio y suma de tres cientos pesos pagaderos en el termino de tres anos satisfacendo cuda ano mi treis al prisio conciente de este pays a cuyo payamente si obliga et referido Dn. Patricio Lee en las terminos presciptos en esta veinta de tierra sera comprehendo un arpen y medio de tierra que el referido Dn. Joseph Motard libro y vende al mismo adquiriente le qual linala de mi lado con la tierra de la vienda, Chouteau, y el otro lado Dn. Carlos Tayon situado en el mismo sitio que la antecedents con la sola diferencia que este ultima se halta en la segundo concession de esta villa y que el dh'o vendetor declara pertenerle de derecho asi han conocido y accordado promotivos las testigos de asistencia que han formade con migo, el referido Ten'te de Gob'or y las partes el mismo dia mes y ano que ut supra.

JOSEPH MOTARD,
PATRICIO LEE,
JOSEPH HORTIZ,
P. LAFFILARD,
CARLOS DEHAULT DELASSUS.

Certified by M. P. Leduc.

Deed.

En la villa de Sn. Luis de Illinois a los veinte y dos dias del mes de Agosto del ano. de mil ochocientos tres; a defecto de Escribano Publico en ella ante mi D'n Carlos Dehault Delassus Coronel del Rea's Exercitos y Themen'te de Governador de esta alta Louisiana y en presencia de las testigos de asistencia D'n Joseph Hortiz, y D'n Franco. Valois estubo presente en su propria persona D'n Patricio Lee, vecino y del comisio de esta villa, el qual por estas presentes de clara y confiessa haver hey dia vendido, cedido, transportado, y abandano tanto para haver, como para siempre, y promoto hacer gozar y preservar de todas Dendas, Desarios hipotecas, y vicio-nes, substituciones, y generalm'te todo legual serono predieron a Calvino Adams vicino igualmente de esta e villa a que presente, stipulando, acceptando y adquiriendo para el y sus herederos u otros que representen su derecho, como siete arpanes de tierra de fnato y quaranta de profundidad situados en la pradorin de esta villa que llaman el que de sague contra la sivera del motivo de D'n Auguste Chouteau, sinque el adquiriente pueda impedir a las derechos de esta riviera y a su proximidad al refuido Sor. Chouteau, y gualmente libra y vende un arpen y medio de tierra de frente y quarenta de profundidad en la segunda concesion de la misma praderia que linda de un lado con la de la vienda Chouteau y del otro a la de D'n Carlos Tayon cuyos tierras pertenecen al enunciado D'n Patricio Lee, por haver las adquerido del definito D'n Josef Motard, por venta juridica que existe en el archivo de este gobierno confecha del siete de Noviembre de mil ochocientos, y el Dn. Calvino Adams nos declare haver viste, y visilidas de las que seda por con-

tente y satisfecho, seis nado retenun ni resevarse adquiriendo las legues y conforma a las leyes y por el precio y suma de tres cientos pesos pagados en los terminos y especies que sigmen; a saver en el mes de Octubre de este presente ano cien minutes de mayo, en el ano que vieno de mil ochocientos quatro, cien minutes de trigo, y cien de maiz; y en el ano siguiente de mil ochocientos cinco, cien minotes de trigo, las que haran la total suma de los tres cientos pesos, quedando las d'a tierras hipotecadas a favor dal vendedor hasta la total satisfacion sin que el comprador pueda disponer de ellas apena de Molidad y su condenado a payar los gastos que ocasione la contra viniera, asi han convenido y arredado, promitundo, &c., obligando, &c., en f'e de loqual lo firmeran las partes y testigos de asistencia con migo el referido Ten'te de Governador el mismo dia, mes, y ano, que st. supra.

PATRICIO LEE,
CALVINO ADAMS,
JOSEPH HORTIZ,
JUAN ROBAGNA,
CARLOS DEHAULT DELASSUS.

Don Carlos Dehault Delassus, Co'l de las R'al Ex'tes y Themente, de Governador de esta alta Louisiana; certifico que la presente copia es conforme al original qe. queda depositada en el archivo de este Gobierno, le mi mando y para qe. suva a las fines qe. cronbuga doy la presente, fecha ut supra.

DELASSUS.

See record-book B, ps. 477, 480, and 481.

September 9, 1806.

The board met, agreeably to adjournment: Present, the Hon'l John B. C. Lucas and Jas. Donaldson, esq's.

Calvin Adams, ass'e of Patrick Lee, who was assignee of Joseph Motard, claiming, under the 2 section of the act, 1,340 arpents of land, situate on Mill creek, district of St. Louis, produces a survey of the same, dated the 16 November, 1805, a deed of transfer, executed before commandant by Joseph Motard to said Patrick Lee, dated the 17 November, 1800, and another deed of transfer, executed also before the commandant, by said said Patrick Lee, to claimant, dated the 22 August 1803. Auguste Choutaeau, being duly sworn, says that the aforesaid Joseph Motard had no family; that the said tract of land was settled, about twelve years ago, by one Cotard for said Motard; that the samo was actually inhabited and cultivated, until the year 1800; that it was well improved; said Motard had on the same houses and out-houses.

The board reject this claim for want of actual inhabitation and cultivation on the 20th day of December, 1803.

See minutes of old board, book No. 1, ps. 524 and 525.

Tuesday, October 25, 1808.

Board met: Present, the Hon'l Clement B. Penrose, Frederick Bates.

Calvin Adams, assignee of Patrick Lee, assignee of Joseph Motard, claiming 1,340 arpents of land, situate on Mill creek, district of St. Louis.

David Musick produces a deed of conveyance from said Adams et wife to him, dated 22d January, 1800; said deed on file. Laid over for decision. Board adjourned.

CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes of old board, book No. 3, pp. 322, 323, and 326.

Monday, June 25, 1810.

Board met: Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners. Calvin Adams, assignee of Patrick Lee, assignee of Joseph Motard, claiming 1,340 arpents of land. See book No. 1, page 524; book No. 3, page 323. It is the opinion of the board that this claim ought not to be granted. On comparing the plats of survey, this land appears to be within the tract claimed as the common of St. Louis.

Board adjourned till to-morrow, 3 o'clock p. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE.
FREDERICK BATES.

See minutes of old board, book No. 2, ps. 404, 405, and 407.

Monday, July 8, 1833.

L. F. Linn appeared, pursuant to adjournment. No. 328, Calvin Adams' legal representatives, in the name of said Adams, and as assignee of Joseph Motard, claiming 1,340 arpents of land on Mill creek, near the city of St. Louis.

See book B, page 480, and following. Mml. No. 1, page 524; No. 3, p. 323; No. 4, p. 404 and 405. Produces a paper purporting to be a translation of a concession, sworn to and subscribed by Peter Provenchere; also, a translation of a plat and certificate of survey.

Louis Dubeenil, being duly sworn, says, that 40 years ago there was, to his knowledge, people working under Motard, on said piece of land; that he several times wrote accounts for his father for produce, which his said father had bought from said plantation; that Mottard had there some cattle; that said place was occupied for a long time by one Cottard, under Mottard; and deponent went often on said place to see said Cottard, and that said place continued to be occupied by or under Motard, till his death, which happened a short time prior to the change of government. Peter

Chouteau, sen'r, duly sworn, says, that 42 or 43 years ago Jas. Motard was cultivating said land, and had one Cottard on said place as his agent; that said land was cultivated till Motard's death; that after his death a mulatto man lived on said place; that at Motard's death said tract was sold, and deponent thinks was bought by Patrick Lee; that Motard cultivated said land for 10 or 12 consecutive years by himself, or through him. Deponent further says, that the said tract did not interfere with the commons.

Alexander Bellisime, being duly sworn, says that he has been in this country these forty-five years; that when he arrived to this country, the said Mottard was inhabiting and cultivating said tract of land; the deponent often went on said place to see said Motard, who had then an orchard bearing fine apples, and that the place continued to be cultivated by or under Motard, till very near the time of the taking of possession of the country by the American government.

Adjourned until to-morrow, at 9 o'clock a. m.

L. F. LINN.

See minutes of the late board, book No. 6, ps. 216, 217, 218, 224.

Tuesday, July 7, 1835.

F. R. Conway, esq., appeared, pursuant to adjournment.

In the case of Joseph Motard, claiming 1,340 arpents of land, see book No. 6, p. 216. Pascal L. Cerre, duly sworn, says, that he knew Motard's plantation from the year 1787 to 1791, and from 1794 till the change of government; that said plantation, as cultivated by or under said Motard, was, to his perfect knowledge, outside of the St. Louis common.

Michael Mach, duly sworn, says he is 56 years of age; that he knew Motard's plantation for forty years; that the fences of the common went to Motard's field, and thence run toward the river Des Peres, leaving said Motard's farm outside of the said common; witness further says, that he rented said plantation for two years from Calvin Adams; this was about 15 years ago; witness does not know of any other improvement made in that neighborhood.

Charles Varhard, being duly sworn, says that he has known Motard's plantation for great many years; that he, witness, cultivated the same for two or three years; that it was outside of the common, and he can yet show where the fence of the common was laid, leaving said plantation entirely outside of the common. Witness never knew of any other improvement in that vicinity.

Adjourned until to-morrow, at 9 o'clock a. m.

F. R. CONWAY.

See minutes of the late board, book No. 7, ps. 208, 213, and 214.

Thursday, August 20, 1835.

The board met pursuant to adjournment: Present, F. R. Conway, J. H. Relfe, F. H. Martin, commissioners.

328. Joseph Motard, claiming 1,340 arpents of land. See book No. 6, p. 217; No. 7, p. 213.

The board are unanimously of opinion, that 280 arpents of land (it being the quantity ordered to be surveyed by the lieutenant governor) ought to be confirmed to the said Joseph Motard, or to his legal representatives, according to the said order of survey.

Adjourned until to-morrow, at 9 o'clock a. m.

JAMES R. RELFE,
F. H. MARTIN,
F. R. CONWAY.

See minutes of the late board, book No. 7, ps. 224 and 225.

RECORDER'S OFFICE,
ST. LOUIS, 28 *January*, 1850.

I certify that the foregoing, on pages 1 to 7, is a full and correct transcript from the books, records, files, and documents in this office of the claim of Joseph Motard and his assignees to a tract of seven by forty arpents of land in the Cul-de-Sac, near Saint Louis. The said claim was recommended for confirmation, as for decision No. 238, in the report to the Commissioner of the General Land Office, of the 30 September, 1835, by the commissioners appointed in pursuance of the act of Congress, approved the 9th of July, 1832, entitled "An act for the final adjustment of private land claims in Missouri," and the act of the 2d March, 1833, supplementary thereto; and the said claim was confirmed according to said recommendation to "Joseph Motard, or to his legal representatives," by the first section of the act of Congress, approved the 4 of July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes," as appear at page 245 of the printed copy of the acts of the first session of the twenty-fourth Congress of the United States, officially transmitted to this office by the said Commissioner of the General Land Office.

ADOLPHE RENARD,
U. S. Recorder of Land
Titles in the State of Missouri.

	Fee.
2,942 words,	$3 65
Plat,	40
Cut,	1 00
	$5 05

A. R.

Deed of Dav. Musick to D. Adams, &c.

Know all men by these presents, that I, David Musick, and Prudance, my wife, of the county of St. Louis, and State of Missouri,

for and in consideration of the sum of seven hundred and nine dollars to us in hand, at and before the ensealing and delivery thereof, well and truly paid by David Adams, James Adams, and Sarah Ann Adams, children of Calvin Adams, of the town of St. Louis, county aforesaid, the receipt whereof we do hereby acknowledged, and therefrom, and of every part or parcel thereof, do acquit and forever discharge them, the said David, James and Sarah: I, the said David Musick, and Prudence, my wife, have granted, bargained, and sold, and hereby do grant, bargain, and sell unto the said David, James and Sarah, and their heirs and assigns forever, the two equal undivided third parts of the following tracts or parcels of land, viz: first, the two *two* equal undivided third parts of seven arpens of land in front, by forty in the rear, situate in that part of the prairie near the town of St. Louis aforesaid called Cul-de-Sac, and on the waters of the creek of Auguste Chouteau's mill; second, the two equal undivided third parts of one arpent and a half in front by forty arpens in the rear, situate in the Big prairie about three miles westwardly off the town of St. Louis, bounded on the one side by land formerly belonging to widow Chouteau, and on the other by land formerly belonging to Charles Tayon; third, the two equal undivided third parts of one thousand and ninety-two arpens of land, more or less, being the settlement right of one Calvin Adams; which several tracts of land above mentioned amount in the whole to the quantity of fourteen hundred and thirty-two arpens, and are the same which I, the said David Musick, purchased from Alexander McNair, and Margaret, his wife, by deed bearing date the fourteenth day of December, one thousand eight hundred and eight, and purchased by said McNair at the sheriff sale, as appears by deed from Jeremiah Connor, the sheriff of said county of St. Louis, to said McNair, bearing date the eighth day of July, one thousand eight hundred and eight, at the suit of Thomas Wright against said Calvin Adams, and it being part of the said tracts of land which said Calvin Adams purchased from Patrick Lee, by deed bearing date the twenty-second day of August, one thousand eight hundred and three, as will more fully and at large appear, reference being had to the office of the clerk of the circuit court, and ex officio recorder for said county of St. Louis; and finally a certain tract or parcel of land lying and being situate on Little Rock creek, in the present county of Jefferson, and containing six hundred and forty acres, being the improvement or settlement right claimed by said Calvin Adams under John Gilmore, as appears by the record-book B, page four hundred and seventy-nine, in the recorder's office of land titles: to have and to hold the said equal and undivided two-thirds of the said four*tro* hundred and thirty-two arpens, more or less, and the aforesaid six hundred and forty acres, together with all and singular the privileges and appurtenances to the same belonging, or

in anywise appertaining, unto them, the said David, James and Sarah, as tenants in common, and not as joint tenants, their heirs and assigns forever, upon this express condition, nevertheless, that they, the said David, James and Sarah, being well acquainted with the titles of said lands, take the same at their own risk and hazard, without any recourse against the said David for the consideration money, or any part thereof, in case the titles to the said premises, or any part thereof, should fail.

In testimony whereof, I, the said David Musick, and Prudence, my wife, have hereunto, with the said David, James and Sarah Ann, set our hands and seals, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and twenty-three.

DAVID MUSICK, [L. S.]
PRUDENCE MUSICK. [SEAL.]

Signed, sealed, and delivered in presence of—

M. P. LEDUC,
SILO PAPPIN.
THOS. R. MUSICK,
As witness to Dav'd Musick, &c., &c.

Personally came and appeared before me, the undersigned, a justice of the peace for the county of St. Louis, David Musick, and Prudence, his wife, who signed the within instrument of writing, and sealed the same, and acknowledged the same to be hands and seals, acts and deeds, for the purposes therein contained.

The s'd Prudence Musick, wife of the said David, being by me examined, apart from her s'd husband, and by me made acquainted with the contents of the within instrument of writing, declares she executed the same of her own free and voluntary will, without restraint, constraint, or undue influence of her said husband.

In testimony whereof, I have hereto set my hand and affixed my seal, this twenty-sixth day of September, in the year of our Lord 1823.

THOS. R. MUSICK,
Justice of the Peace. [SEAL.]

Recorded Oct'r 1, 1823.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI,
County of St. Louis.

I, the undersigned, recorder for said county, certify the foregoing to be a true copy of an instrument of writing from David Musick and wife to David Adams et al., together with the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains of record in my office, in book L, page 418.

[L. S.] Witness my hand and official seal, this 23d day of October, 1858.

P. KEEMLE, *Recorder.*
Pr. J. CONRAD, *Dep'y.*

Jno. Adams to El. Hayden.

I have sold unto Elijah Hayden the undivided one-third part of three hundred and forty arpens of land near the city of St. Louis, at the head of Chouteau's mill *pound*, and the same *track* jointly held by myself, David Adams and Robert Duncan, and where I now reside, and for and in consideration of the sum of one hundred dollars to me in hand paid before the sealing of these presents, and whenever the said Adams makes or causes to be made a good and sufficient title to one-third of said tract, the said Hayden binds himself to pay a further sum of six hundred dollars. It is further understood that should the said Adams not be able to make a good and sufficient title to said premises he is to refund the money without interest, and the s'd Hayden is to return the premises to the said Adams without any charge whatever for the use of said premises, and should the said Hayden erect for his own *conveinients* any *nesary* improvement, he shall be permitted to remove the same unless the said Adams thinks fit to pay to said Hayden for the same, then in that case the said Hayden shall leave the said improvement on the premises and return the same to the said James Adams, *his* first refunding the amount of said pur*ches* *mun*ey that the s'd Adams has already received from said Hayden.

In witness whereof, "we" have hereunto *sete* "our" hands and affixed our seals. St. Louis, February 22d, 1831.

JAMES ADAMS. [SEAL.]
E. HAYDEN. [SEAL.]

Test: CHARLES MULLIKIN.

El. Hayden to J. Toney.

I assign all my rights to the within unto Joab Toney, and if s'd Adams should fail to make the title, or should be unable to pay, I am not bound to refund in law or equity.

E. HAYDEN.

This 24th June, 1831.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this twenty-third day of November, eighteen hundred and thirty-five, before me, Wilson Primm, a justice of the peace, within and for the county aforesaid, came Elijah Hayden, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing,

as having executed the same and acknowledged the said instrument of writing to be his act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

WILSON PRIMM,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that this twenty-third day of November, eighteen hundred and thirty-five, before me, a justice of the peace, within and for the county aforesaid, came Charles Mullikin, of said county, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as a subscribing witness, and made oath that James Adams, whose name is subscribed to the said instrument of writing, as grantor, is the real person who executed the same; that the said James Adams subscribed, sealed, and delivered the same in his presence, and acknowledged the same to be his act and deed for the purposes therein mentioned, and that he, the said Charles Mullikin, subscribed the said deed as witness, in the presence and at the request of the said James Adams.

CHARLES MULLIKIN.

Taken and certified the day and year aforesaid.

WILSON PRIMM,
Justice of the Peace.

Recorded 24th November, 1835.

ARCHIBALD GAMBLE, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder in and for said county, certify the foregoing to be a true copy of an instrument of writing, together with the assignment and two certificates of acknowledgment and of the date of recording thereof, as fully as the same remain of record in my office, in book V, page 169.

[L. S.] Witness my hand and official seal, at St. Louis, the 2d December, 1852.

S. D. BARLOW, *Recorder.*

J. Adams to E. T. Langham.

This quitclaim deed, made this seventh day of March, eighteen hundred and thirty-six, witnesseth, that James Adams and his wife Delirt Adams, of St. Louis, in the State of Missouri, for and in consideration of five hundred dollars, to them in hand paid by Elias T. Langham, also of St. Louis, in the State of Missouri, at and before the making of this deed, the receipt of which they do

hereby acknowledge, have bargained and sold, and by these presents they do bargain and sell unto the said Elias T. Langham, his heirs and assigns forever, all the right, title, property, claim, and demand of them, the said James Adams and Delirt Adams his wife, of, in, and to the following described tracts of land, namely: the one equal, undivided third part of seven arpens of land in front, by forty arpens in depth, situate south of Mill creek, bounded east by a tract of land claimed in the name of James *Mackery*, and another tract of land claimed in the name of *Ma* Marie *Nicoll* Les Bois, south by said Mr. Marie *Nicholl* Les Bois and the commons of Saint Louis, west by the prairie des Noyers common-field lots, and north by Auguste Chouteau mill tract. Also, the one equal, undivided third part of one thousand and ninety-two arpens of land, more or less, adjoining the above described tract on the south or west, it being the settlement right of Calvin Adams, which said several tracts of land amount in the whole to the quantity of thirteen hundred and seventy-two arpens, and in the same tracts of land which were conveyed by David Musick and his wife Prudence Musick, of St. Louis county, Missouri, to David Adams, James Adams, and Sarah Ann Adams, children of Calvin Adams, by deed bearing date the twenty-fifth of September, eighteen hundred and twenty-three: to have and to hold the tracts of land above described and conveyed, with all and singular the rights, members, and appurtenances thereof, unto him the said Elias T. Langham, his heirs and assigns forever, against the claim of them, the said James Adams and his wife Delirt Adams, their heirs and assigns, and against the claim of all and every person or persons whomsoever, claiming or to claim by, through, or under them, the said James Adams and his wife, Delirt Adams, but not against the claim of any other person.

In witness whereof, they, the said James Adams and Delirt Adams his wife, have hereunto set their hands and seals, on the day and in the year first herein before written.

JAMES ADAMS. [SEAL.]

her
DELIRT ⋈ ADAMS. [SEAL.]
mark.

(Note in original.)—The words "fourteen" and "thirty-two" were crossed out, and the words "thirteen" and "seventy-two" were inserted in their stead, before this deed was signed. The words "or west" inserted before signing.

Signed, sealed, and delivered in presence of—

B. W. AYRES.

STATE OF MISSOURI,

County of Missouri, ss.

Be it remembered, that on this eighth day of March, eighteen

hundred and thirty-six, before me, D. Hough, a justice of the peace within and for the county aforesaid, appeared James Adams and Delirt his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the said instrument to be their act and deed, for the purposes therein mentioned. She, the said Delirt, being by me made acquainted with the contents of the foregoing conveyance, acknowledged, on an examination, apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her said husband.

Given under my hand, the day and year aforesaid.

DANIEL HOUGH,
Justice of the Peace, County Saint Louis.

Filed for record March 9th, 1836, and recorded 14th March, 1836.

JNO. RULAND, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder in and for the county of St. Louis, do hereby certify the foregoing to be a full and complete copy of a deed from James Adams and wife to E. T. Langham, of the certificate of acknowledgment and of the dates of filing and recording thereof, as fully as the same remains of record in my office, in book W, pages 31 and 32.

[L. S.] Witness my hand and official seal, the 10th day of February, 1853.

S. D. BARLOW, *Recorder.*

Langham to Toney.

This deed, made and entered into this twentieth day of March, in the year eighteen hundred and thirty-seven, by and between Elias T. Langham and Eliza, his wife, of the city of St. Louis, of the first part, and Joab Toney, of the county of St. Louis, of the second part, all of the State of Missouri, witnesseth: That the said party of the first part, for and in consideration of the sum of three hundred dollars, lawful money of the United States, in hand paid by the said party of the second part to the said party of the first part before the ensealing and delivery of these presents, and the receipt whereof is hereby acknowledged, the said party of the first part has sold, transferred, and forever quit-claimed, and doth by these presents sell, transfer, and forever quit-claim unto said party of the second part, and to his heirs and assigns, forever, all his claim and interest, as derived from James Adams and wife, in and to a certain tract or parcel of land, situate, lying, and being in St.

Louis county, about two miles from the city of St. Louis, containing seven arpens in front by forty arpens in depth, situate on the creek of Chouteau's mill, and being the same tract of land confirmed to the legal representatives of Joseph Mottard, the interest hereby conveyed being the one undivided third part of said tract as acquired from James Adams and wife by deed dated the seventh day of March, in the year 1836, and the equitable title to which said tract was in the said Toney by virtue of an obligation for a title made by said Adams to one Elijah Hayden, and by him transferred to said Toney: to have and to hold unto the said Joab Toney, and to his heirs and assigns, forever, the said granted and sold premises, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining; and it is understood between the parties aforesaid that the said Toney is to have no recourse upon the said Langham in case of a failure of title.

In testimony whereof, the said party of the first part have hereunto set their hands and seals the date first above written.

E. T. LANGHAM. [SEAL.]
ELIZABETH LANGHAM. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this twentieth day of March, eighteen hundred and thirty-seven, before the undersigned, clerk of the circuit court within and for the county aforesaid, came Elias T. Langham and Elizabeth, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed, hands and seals, for the purposes therein mentioned. She, the said Elizabeth Langham, being by me made acquainted with the contents of said conveyance, acknowledged and declared, on an examination separate and apart from her husband, that she executed the same, and relinquishes her dower to the real estate therein conveyed, freely and voluntarily, and without any compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of St. Louis, [L. S.] this twentieth day of March, eighteen hundred and thirty-seven.

JNO. RULAND, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss.

I, John Ruland, clerk of the circuit court, and ex officio recorder in said county, do certify that the foregoing deed was filed on the 20th March, 1857, and is truly recorded in my office, book A, No. 2, page 86 and following.

Given under my hand and seal of said court, this second day of May, anno Domini 1857.

[L. S.]

JNO. RULAND,
Recorder.

D. Adams to Marsh, Ayres, and Langham.

This quit-claim deed, made this ninth day of March, eighteen hundred and thirty-six, witnesseth: That David Adams and his wife, Elizabeth Adams, of St. Louis, in the State of Missouri, for and in consideration of fourteen hundred dollars, to them in hand paid by Enich C. Marsh, Benjamin W. Ayres, and Elias T. Langham, also of Saint Louis, in the State of Missouri, at and before the making of this deed, the receipt of which they do hereby acknowledge, have bargained and sold, and by these presents they do bargain and sell, unto them, the said Marsh, Ayres, and Langham, their heirs and assigns, forever, all the right, title, interest, property, claim, and demand of them, the said David Adams and his wife, Elizabeth Adams, of, in and to the one equal undivided third part of two third parts of two certain unsurveyed tracts of land in St. Louis county, Missouri, which said tracts of land were conveyed by David Musick and his wife, Prudence Musick, to David Adams, James Adams, and Sarah Ann Adams, children of Calvin Adams, by their deed bearing date the twenty-fifth of September, eighteen hundred and twenty-three, and which said tracts of land are situate near the city of St. Louis, and may be found and known by the following description, namely:

The first is a tract of land of seven arpens by forty arpens, making in all the quantity of two hundred and eighty arpens, lying and being chiefly on the south side of Mill creek, and bounded northwardly by Auguste Chouteau's mill tract, eastwardly by a tract of land claimed in the name of James Mackay, southwardly by land claimed in the name of James Mackay, southwardly by land claimed by the inhabitants of St. Louis, as commons, and westwardly by lots or lands of Prairie des Noyers common-fields.

The second and last is a tract of land of one thousand and ninety-two arpens, more or less, which is claimed as the settlement right of Calvin Adams, and to be adjoining the tract first herein mentioned and described: to have and to hold the said one equal undivided third part of two third parts of said tracts of land above mentioned and described, with the rights, members, and appurtenances thereof, all and singular, unto them, the said Marsh, Ayres, and Langham, their heirs and assigns, forever, against all and every claim, however derived, of them, the said David Adams and his wife, Elizabeth Adams, their heirs and assigns, and against the claim of all and every other person or persons whomsoever, claiming or to claim by, through, or under them, the said David Adams and his wife, Elizabeth Adams; it being expressly understood, however, that this deed conveys no right which the said

David Adams and his wife, Elizabeth Adams, have in the above-mentioned tracts of land in right of Sarah Ann Wilson, deceased, who was the above-mentioned Sarah Ann Adams, and sister to said David and James Adams.

In witness whereof, the said David Adams and his wife, Elizabeth Adams, have hereunto set their hands and seals on the day and in the year first herein-above written.

DAVID ADAMS, [SEAL.]

her
ELIZABETH ⋈ ADAMS. [SEAL.]
mark.

Signed, sealed, and acknowledged in presence of—

STATE OF MISSOURI,
County of Saint Louis, ss.

Be it remembered, that on this ninth day of March, eighteen hundred and thirty-six, before me, D. Hough, a justice of the peace within and for the county aforesaid, appeared David Adams and Elizabeth, his wife, who are personally known to me to be the persons whose names are subscribed to the within and foregoing instrument of writing as parties thereto, and severally acknowledged the said instrument to be their act and deed for the purposes therein mentioned; she, the said Elizabeth, being by me made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Given under my hand the day and year aforesaid.

DANIEL HOUGH,
Justice of the Peace, County of St Louis.

Filed for record March eleventh, 1836, and recorded 16th March, 1836.

JNO. RULAND,
Recorder.

STATE OF MISSOURI,
County of St. Louis, ss.

I, the undersigned, recorder in and for the county of St. Louis, do hereby certify the foregoing to be a full and complete copy of a deed from David Adams and wife to Marsh, Ayres, and Langham, of the certificate of acknowledgment, and of the dates of filing and recording thereof, as fully as the same remains of record in book W, pages 38 and 39.

[L. S.] Witness my hand and official seal at S. Louis, the 10th day of February, 1853.

S. L. BARLOW,
Recorder.

Transcript of R. Duncan vs. Langham, &c., in Partition.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on the twenty-first day of November, eighteen hundred and thirty-six, there was filed in the office of the clerk of the St. Louis circuit court a petition in the words and figures following, to wit:

Petition.

To the St. Louis Circuit Court for November Term, 1836.

The petition of Robert Duncan represents, that one David Musick being seized in fee of a tract of land lying in Saint Louis county, containing seven arpents by forty, or two hundred and eighty arpents, situate near St. Louis, in the *the* prairie called the Cul-de-Sac prairie, (which land belonged to one Joseph Motard, who conveyed the same to one Patrick Lee, who conveyed to Calvin Adams, who conveyed to said Musick,) executed his deed dated the nineteenth of January, in the year eighteen hundred and twenty, and thereby conveyed to your petitioner the one equal undivided third part of said tract of land, describing it as seven arpents in front by forty in the rear, situate in that part of the prairie near the town of St. Louis called Cul-de-Sac, and on the waters of the creek of August Chouteau's mill.

And your petitioner further says, that on the twenty-fifth of September, eighteen hundred and twenty-three, said Musick, by his deed of that date, conveyed to James Adams, David Adams, and Sarah Ann Adams, the two equal undivided third parts of the said tract of land, so that your petitioner and the last-named persons owned the whole of said tract in fee, he owning one-third, and they owning each two-ninths of said tract of land.

Your petitioner further sets forth that one Joab Toney is, as he believes, the assignee and owner of a bond or warrant executed by said James Adams for the conveyance and sale of his, the said James, interest in said land, which bond is dated the twenty-second day of February, in the year eighteen hundred and thirty-one, and calls for an undivided third of said tract, and that on the seventh day of March, eighteen hundred and thirty-six, said James Adams and his wife executed their quit-claim deed in fee of the *undived* third of the same land to Elias T. Langham.

Your petitioner further says, that on the ninth of March, eighteen hundred and thirty-six, said Daniel Adams and his wife, Elizabeth, executed their deed of that date by which they conveyed in fee to Enoch C. Marsh, Benjamin W. Ayres, and Elias T. Lahgham, all their right and interest in the undivided two-ninths of said tract of land, which tract is described in said deed as seven by forty arpents, lying chiefly on the south side of

Mill creek, and bounded northwardly by Auguste Chouteau's mill tract, eastwardly by a tract of land claimed in the name of James Mackey, southwardly by land claimed by the inhabitants of St. Louis as commons, and westwardly by lots or lands of Prairie des Noyer common-fields.

And your petitioner also states, that on or about the day of , in the year one thousand eight hundred and twenty-four, said Sarah Ann Adams married one Zachariah Wilson, and that afterwards, on or about the twenty-seventh day of March, eighteen hundred and twenty-seven, she died, leaving one child and heir born of that marriage, then between two and three months old, an infant named , who afterwards, and in the lifetime of his father, the said Zacharia Wilson, and on or about the day of April, in the year eighteen hundred and twenty-seven, departed this life, and that afterwards, on or about the day of January, in the year eighteen hundred and thirty-six, said Zachariah Wilson died also intestate, leaving no children, and that when he died he was seized in fee, as heir of his said child, of the undivided two-ninths of said land.

That your petitioner does not know who the heirs of said Wilson are, or where they reside, but supposes there are heirs, but their names and residence he does not know, and has never heard.

Your petitioner further sets forth, that he has understood that one Charles Mullikin pretends to have an interest in said land to the amount of fifty arpents, as derived from said Musick, but whether he has any or not is unknown to your petitioner, though he charges that said Mullikin has no such interest, and submits the matter to the determination of the court.

Your petitioner states the following to be in his view a correct tabular statement of the situation of said land:

Robert Duncan, the petitioner, has $\frac{3}{9}$; the unknown heirs of Zachariah Wilson, $\frac{2}{9}$; Marsh, Ayers and Langham, $\frac{2}{9}$; Joab Toney has a bond from James Adams, for which is also claimed by E. T. Langham, under a deed, $\frac{2}{9}$.

Wherefore your petitioner prays that a division and partition of the said land may be made among those interested therein, according to their respective rights therein, or for a sale thereof if it shall appear that partition cannot be made without great prejudice to the owners, or a division of the proceeds, &c.

ROBERT DUNCAN.

STATE OF MISSOURI,
County of St. Louis, ss.

Robert Duncan, being duly sworn, on his oath saith, that the the foregoing petition is true.

ROBERT DUNCAN.

Sworn to and subscribed before me this 10 October, 1836.

PHILIP CASSIDY,
Justice of the Peace.

Notice.

To Elias T. Langham, Enoch C. Marsh, Benjamin W. Ayers, Joab Toney, Charles Mullikin, and the unknown heirs of Zachariah Wilson:

You are hereby notified, that on the 15 day of November next, during the next November term of the Saint Louis circuit court, or as soon thereafter as a hearing can be had, the foregoing petition will be presented to said court for action thereon.

ROBERT DUNCAN.

Oct. 11, 1836.

Summons.

Served the foregoing affidavit and notice on Charles Mullikin, on the 13 day of Oct., 1836, by delivering to him a true copy of the said petition, affidavit, and notice, in the county of St. Louis.

JAMES BROTHERTON, *Sh'ff.*
By M. BROTHERTON, *Dep'y.*

Order of Prob'n.

And afterwards, to wit, at the November term, on the 21st day of November, 1836, the following further proceedings were had.

Petition for Partition.

ROBERT DUNCAN
vs.
ELIAS T. LANGHAM, ENOCH C. MARSH, Benjamin W. Ayers, Joab Toney, Charles Mullikin, and the unknown heirs of Zackariah Wilson.

On motion of the petitioner, by his attorney, it is ordered that the said unknown heirs of Zackariah Wilson be notified that the said petition has been filed against them, the substance whereof is that one David Musick being seized in fee of a tract of land lying in St. Louis county, containing seven arpents by forty, or two hundred and eighty arpents, situate near St. Louis, in the prairie called the Cul-de-Sac prairie, (which land formerly belonged to one Joseph Motard, who conveyed the same to one Patrick Lee, who conveyed to one Calvin Adams, who conveyed to said Musick,) executed his deed, dated the nineteenth of January, eighteen hundred and twenty, and thereby conveyed to the said petitioner the one equal undivided third part of said tract of land, describing it as seven arpents in front, by forty in the rear, situate in that part of

the prairie near the town of St. Louis called Cul-de-Sac, and on the waters of the creek of August Chouteau's mill.

That on the 25 of September, eighteen hundred and twenty-three, said Musick conveyed to James Adams, David Adams, and Sarah Ann Adams the two equal undivided third parts of the said tract of land, so that the said petitioner and the last named persons owned the whole of said tract in fee, he owning one-third, and they owning each two-ninths of said tract of land. That one Joab Toney is the assignee and owner of a bond of covenant executed by said James Adams for the conveyance and sale of his interest in said land, which bond calls for one undivided third of said tract; and that on the seventh day of March, 1836, said James and his wife executed their quit-claim deed in fee of the undivided third of the same land to Eli T. Langham. That on the ninth of March, 1836, said David Adams and his wife executed their deed of that date, by which they conveyed in fee to Enoch C. Marsh, Benjamin W. Ayres, and Elias T. Langham, all their right and interest in the undivided two-ninths of said tract of lsnd, which tract is described in said deed as seven by forty arpens, lying chiefly on the south side of Mill creek, and bounded northwardly by August Chouteau's mill tract, eastwardly by a tract of land claimed in the name of James Mackey, southwardly by lots or lands of Prairie des Noyers common-fields. That on or about the day of , 1824, said Sarah Ann Adams married one Zachariah Wilson, and that on or about the 27th day of March, 1827, she died, leaving one child and heir born of that marriage, then between two and three months old, an infant named , who afterwards, and in the lifetime of his father, the said Zachariah Wilson, died on or about the day of April, 1827; that on or about the day of January, 1836, said Zachariah also died intestate, having no children, and that when he died he was seized in fee, as heir of his said child, of the undivided two-ninths of said land; that the said petitioner does not know who the heirs of said Wilson are, or where they reside, but supposes that there are heirs; that one Charles Mullikin pretends to have an interest in said land to the amount of fifty arpents, as derived from said Musick, but whether he has any or not is unknown to said petitioner; that in the view of said petitioner the following is a correct statement of the situation of said land, to wit: Robert Duncan, the petitioner, has $\frac{3}{9}$, the unknown heirs of Zachariah Wilson $\frac{2}{9}$, Marsh, Ayres, and Langham $\frac{2}{9}$, Joab Toney, who has a bond from James Adams for $\frac{2}{9}$, which is also claimed by Elias T. Langham. And the petitioner prays that a partition of the said land may be made among those interested therein, or for a sale thereof, if it shall appear that partition cannot be made without great prejudice to the owners thereof, And it is further ordered by the court, that publication of the order be made once

a week for eight successive weeks in some newspaper printed in the city of Saint Louis.

And afterwards, to wit, on the 14th day of March, eighteen hundred and thirty-seven, the following further proceedings were had:

ROBERT DUNCAN
vs.
ELIAS T. LANHAM, B. W. AYRES, Enoch C. Marsh, Jacob Toney, Charles Mullikin, the unknown heirs of Zachariah Wilson. } In Partition.

Now at this day comes the said petitioner, by his attorney, and proves to the court that the order of publication made herein at the last term of this court has been duly published, agreeably to law and the terms of said order, and the said Lanham, Marsh, and Ayres come and enter their appearance to this suit, waiving the services of copies of the said petition and of notices upon them; and thereupon it is ordered that said defendants, Lanham, Marsh, and Ayres, and the unknown heirs of Zachariah Wilson, plead to said petition, and on or before the twenty-first day of the present month. Also, on the 14th day of March, eighteen hundred and thirty-seven, the following agreement to appear was filed:

Saint Louis Circuit Court.

ROBERT DUNCAN
vs.
ELIAS T. LANHAM, ENOCH C. MARSH, Benjamin W. Ayres, Jacob Toney, Charles Mullikin, and the unknown heirs of Zacharia Wilson.

We, the undersigned defendants, agree to appear to the foregoing action without service on us of copies or process, and that on filing this paper appearance shall be entered.

Saint Louis, January 3d, 1837.

E. T. LANHAM,
ENOCH C. MARSH,
B. W. AYRES.

Plea.

And on the 20th of March, 1837, the following plea was filed:

ROBERT DUNCAN
vs.
ELIAS T. LANHAM, ENOCH C. MARSH, Benjamin W. Ayres, Joab Toney, and Charles Mullikin, and heirs of Zacharia Wilson.

And the said Lanham, Marsh, Ayres, Toney, and Mullikin, by their attorney, come and defend the wrong and injury, when, &c., and say that the said premises in the said petition described are not held by said plaintiff, and the defendants in the petition named, in the quantity and interests in the said petition set forth, in manner and form as the said plaintiff hath in his said petition alleged; and of this they put themselves upon the country.

And afterwards, to wit, the following further proceedings were had in this case, on the 26th of August, 1837:

ROBERT DUNCAN
vs.
ELIAS T. LANHAM, ENOCH C. MARSH, Benjamin W. Ayres, Joab Toney, Charles Mullikin, and the unknown heirs of Zachariah Wilson. } In Partition.

Now, at this day, come as well the said plaintiff as the defendants, except the unknown heirs aforesaid, by their respective attorneys, and the notice to the said unknown heirs of Zacharia Wilson heretofore made having been duly published as before shown, and the said heirs not having answered the said petition, it is as to them taken as confessed; and thereupon come also a jury, to wit: William G. Wyath, Frederick W. Beltzvoon, Resdom M. Charles, Thomas Lee, Elkame English, Alexander Oliver, Joseph C. Lavirlle, Isham B. Sexton, Benjamin B. Hicks, Mathias Stirts, John Bogert, Horace Wilson, twelve good and lawful men, who being duly elected, tried, and sworn the issue within joined between the parties aforesaid, well and truly to try upon their oaths aforesaid, say, that the said premises in said petition mentioned and described are held by the said plaintiff and the said defendants in the quantities and interests in the said petition set forth in manner and form, as the said plaintiff in his said petition, and the jurors aforesaid, on their oaths aforesaid, do further find, that said Mullikin is the owner of nine arpens and eighty-one hundredths of an arpent undivided and unlocated part of said tract of land, to wit, seven arpents in front by forty in the rear, situate in that part of *the near* the town of Saint Louis called the Cul-de-Sac, and on the waters of the creek of August Chouteau's mill, as described in the deed from David Musick to said Duncan, dated 19th January, 1820; that said plaintiff is the owner of $\frac{1}{3}$ of the residue of said tract; that said Marsh, Ayres, and Lanham are jointly the owners of two ninths of said tract after deducting the portion of said Mullikin, each of them being the owner of two undivided twenty-sevenths after said deduction; that said Toney is entitled to two-ninths of of said residue after the deduction of said Mullikin's portion, and that the unknown heirs of Zacharia Wilson, the owners of the other undivided two-ninths of said tract after said Mulkin's deduc-

tion; therefore it is considered by the court, and accordingly adjudged, that partition be made of said tract of land according to the rights and interests of the parties as above mentioned, quantity and quality relatively considered, and James Clemens, Mr. Russel, and Frederick Dent, three respectable freeholders, residents of the county of Saint Louis, where the land to be divided is situate, commissioners to make the said partition according to the ascertainment above, and they are hereby required to make report of their proceedings without delay.

Motion for New Trial overruled.

And afterwards, on the 26th of August, 1837, was filed the following motion for a new trial.

ROBERT DUNCAN
vs.
EILAS T. LANHAM & others. } In Partition.

Now, at this day, come the said Charles Mullikin, and also the said Joab Toney, by their respective attorneys, and file their separate motions and reasons for a new trial, which being seen and heard, and by the court here fully understood, it is considered by the court that said motions respectively be overruled. And afterwards, at the November term, 1837, the following further proceedings were had:

ROBERT DUNCAN
vs.
EIALS T. LANGHAM & others.

It being shown to the court that Frederick Dent, one of the commissioners appointed in this cause, is interested in the location of the property to be divided, on motion of the attorney for said plaintiff said Dent is discharged from his said appointment, and Thomas Cohen is appointed by the court to act with the other commissioners in the place of said Dent.

To the Circuit Court of the County of Saint Louis:

The undersigned commissioners, appointed by the circuit court of Saint Louis county to make partition of a certain tract of land, situate in the said county of Saint Louis, seven arpents in front by forty in the rear, situate in that part of the prairie near the town of Saint Louis called the Cul-de-Sac, and on the waters of the creek of Auguste Chouteau mills, as described in the deed from David Musick to Robert Duncan, dated the 19th of January, 1820, being the same tract held under Joseph Motard, the said partition of said land to be made between Robert Duncan, Charles Mullikin, Joab Toney, Enoch C. Marsh, Benjamin W. Ayres, Eolias T. Lanham, and the unknown heirs of Zachariah Wilson, report, that after being sworn according to law, as appearing by their

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1861.

No. 66.

THE ISLAND CITY.

CROMWELL and AL., Libellants and Appellants.

LIBELLANTS' BRIEF.

The elements necessary to constitute salvage: I. A marine peril. II. Voluntary service, upon contingent compensation. III. Success.

As to the latter, the success must be entire. The vessel must be taken into a port of safety, and delivered, or capable of being delivered, to the owner.

Henry Ewbank, 1 Sumner, 416, and cases there cited.

Douglas Decis 4 Mas 536

The services of the Kensington's crew had the two former, but failed of the last element. They left the bark, from necessity, abandoning her to her chances, not selecting the place, but just where the accident befel them. They offered to take off the crew, and to telegraph for relief to be sent to her, showing that they did not consider her in safety. They made frequent efforts to complete their salvage service, but were prevented by the ice.

KENSINGTON'S EVIDENCE.

Gray, pp. 107–9, int. 6.
Taylor, pp. 113–14, int. 2.
Coffin, pp. 116–17, int. 60; pp. 119–20, int. 5–8, 10.
Norris, pp. 122–23–24, int. 5; p. 127, int. 2.
Anthony, pp. 130–31.

FORBES' EVIDENCE.

Morris, p. 136, int. 22, 23.
Fanning, p. 142, int. 20, 21,
Crowell, p. 146, int. 24–26.

RESPONDENT'S EVIDENCE.

McCarty, p. 202, int. 6.
Matthews, p. 211, int. 4.
Stevens, p. 167, int. 9; p. 169, int. 17; p. 169, int. 20; p. 174, int. 13, 14, 15, 16; p. 175, int. 20.

In such case, the merit of the service is immaterial. The Court will not speculate as to whether the ultimate safety of the vessel was made more or less probable by the service rendered; nor as to the degrees of peril in the places where she was found and left. It must be a case of *salvage*, or it is nothing. This claim is only for salvage, and the services rendered were only as salvage, without contract, and upon the contingency of success, and not a *locatio operis*.

As to the R. B. Forbes, there is no claim of salvage.

Answer p. 11. *Libel*, p. 2. *Morris* pp. 133–35, int. 3–6; pp. 137–38, int. 33–36.

The Forbes makes only a claim for contract services for towage: a case of *locatio operis*, to be paid on a *quantum meruit*. Therefore, no question of dispossession of salvors, or of joint or several salvage, arises. The Forbes was engaged by the owners of the bark, was in their service, and subject to their order. She could not dispossess or overrule the master of the bark. The Forbes never had possession. The possession was always in the master of the bark, for the owners. The employment of the Forbes might have been terminated at any time, like any other contract, by the owners of the bark. She could not, like a salvor, insist on retaining possession.

No question can arise between the Forbes and the Westernport. If the Forbes is entitled to compensation for contract services, it is independent of and subject to salvage. After all the salvage rewards are given, her claim may be heard.

But the libel of the Forbes is collusive, and should be dismissed. The Island City was insured in Boston, and the underwriters owned the Forbes, and had her in their employ. There is no allegation of any demand or refusal of payment. On the contrary, the Answer admits and enhances her claim. The pleadings play into the hands of the claimants, the witnesses are mutually cross-examined, giving undue advantage, and, in taking depositions,

the same counsel often act interchangeably for each. The object is solely to obstruct the claim of the Westernport.

Forbes' Libel, p. 5.

The object of the Forbes was not to take the Island City to a place of safety, but to tow her to her port of destination; and in attempting this, she was compelled to leave her in a place of peril.

The Forbes had her in a place of safety, in Hyannis, on Saturday and Sunday, 24th and 25th.

The Kensington, Coffin, p. 121. int. 17.
Norris, p. 124. bottom.
Norris, p. 127. int. 22.
Norris, p. 128. int. 6–9.
Anthony, p. 132. int. 3.
Forbes' Ev. Crowell, p. 145. int. 14, 15.
Westernport, Alex. Baxter, p. 82, int. 16–23.
Alex. Baxter, p. 83. int. 27, 28.
Sylvester Baxter, p. 100. int. 42, 43–46.

In leaving Hyannis, Forbes' object was not to seek a port of greater safety, but to go on her way to Boston.

The Forbes cannot have salvage, in this state of the pleadings, even if the facts allowed it. This is not merely because it is called "contract," but from the entire scope of the libel.

The parties interested in the Island City, to wit, the owners and (still more) the underwriters, acted together, on joint account, for which it might concern, in employing the Forbes. She was their property, and manned by their servants, and served under contract. There is no pretence, in the pleadings or on the evidence, that she was serving for a *contingent* compensation. Probably, she was serving for *no compensation*, her master and crew being on wages calculated on the nature of such service, and the vessel was owned and employed by underwriters for such purposes, to relieve or diminish their liability.

Forbes' Libel, p. 5, article 11.

They have the same counsel.

The examination and cross-examination is conducted interchangeably.

In all the Forbes' testimony there is no appearance for the claimants.

The claimants' counsel here argues earnestly that the Forbes' libel and evidence makes her a salvor, against the interest of the claimants.

The underwriters controlled all, either alone or with the owners, from the first.

Westernport, Sylvester Baxter p. 95, 96, int. 27.
Berry, p. 73. near bottom.

The owner alleges that the Westernport unlawfully took the bark out of their possession.

Answer, p. 8. Art. 3, shows that the Forbes was acting for the owners, claiming to be and recognized as their agent.

If the Forbes was not acting as agent of owners, she was much more a trespasser on the Kensington's possession than we were on hers.

As to wrongful possession by the Westernport, the appearances justified and required her to act as salvor. Berry p. 78 79 int. 13- 18
Scudder p 16 int 13

No owners or prior salvors appeared until after she got her to Hyannis.

No objections were made by either the owners or underwriters, that we were wrong in taking her. Their conduct *at the time* is the only test.

Westernport, Bishop, p. 36 int. 5; pp. 36, 37, int. 9. Sylvester Baxter, p. 95, 96, int. 27.

The service of the Westernport was salvage, in its *nature*. The *degree* will be treated of hereafter.

I. The Island City was in peril. II. The service was voluntary. III. It was completely successful.

The only question can be its degree.

I. *The degree of danger the bark was in on Friday, Jan. 30th, at point C.*

The situation was not selected by the Forbes, but she left the bark, by necessity, just where the hawser broke.

FORBES' EVIDENCE.

Morris, pp. 133–34, int. 4; p. 134, int. 5; p. 138, cross-int. 3–5.
Fanning, p. 143, cross-int. 4.

RESPONDENT'S EVIDENCE.

Stevens, pp. 169–70, int. 23; p. 175, cross-int. 26–27.
Smith, pp. 187–88, int. 28–29; p. 189, int. 41.
Patten, p. 193, int. 5.
Benedictus, p. 199; int. 3, 4, 5.
Matthews, p. 221, int. 64; p. 216, cross-int. 18; p. 218, int. 32, 36.
Westernport—Alex. Baxter, p. 82, int. 17; p. 86, int. 55.

The situation was dangerous. (See Chart.)

WESTERNPORT'S EVIDENCE.

Scudder, pp. 13–14, int. 11–18, 23–25.
Gardner, pp. 18–24, int. 5–45; pp. 25, 26, int. 9.
Hall, p. 50, int. 5.
Russell, pp. 31–33, int. 8–25.
Parker, pp. 41–42, int. 4–9.
Berry, pp. 71–74; p. 75, int. 8; pp. 75, 76, int. 11–17; p. 85, int. 47–50.
Alex. Baxter, p. 83, int. 32–34; p. 84, int. 39–41; p. 85, int. 47–50.
Sylvester Baxter, p. 95, int. 18–24.

FORBES' EVIDENCE.

Fanning, p. 144, int. 1.
Bunker, p. 154, int. 11.
Enos, pp. 156–157, int. 9–12.
Patterson, p. 161, int. 14; p. 162, int. 24, 25.

At the time of the rescue by the Westernport, there were signs of a heavy gale, and there was very bad weather that night and Saturday.

WESTERNPORT'S EVIDENCE.

Alex. Baxter, pp. 83–84, int. 31, 33, 39, 40, 41, 47.
Sylvester Baxter, p. 94, int. 15; p. 98, int. 21.

CLAIMANT'S EVIDENCE.

Stevens, p. 171, int. 31 ; pp. 179–180, int. 60, 69, 71.
Smith, p. 183, int. 13 ; p. 184, int. 16.
Patten, p. 192, int. 6 ; p. 194, int. 7.
Matthews, p. 213, int. 15–16 ; p. 221, int. 59.

FORBES' EVIDENCE.

Bunker, p. 150, int. 5 ; p. 152, int. 16 ; p. 153, 154, cross-int. 9–12.

WESTERNPORT'S EVIDENCE.

Scudder, p. 13, int. 11 ; p. 14, int. 17, 19.
Gardner, p. 18–19, int. 5–8 ; p. 20, int. 18 ; p. 22, int. 26–28.
Russell, p. 31, int. 11 ; p. 33, int. 24.
Parker, p. 41, int. 5 ; p. 42, int. 8, 9.
Berry, p. 72 ; p. 75, int. 8 ; p. 75, int. 12.

Difficulties and dangers of the service rendered by the Westernport.

WESTERNPORT'S EVIDENCE.

Parker, p. 41, int. 5 ; p. 42, int. 9–12.
Smith, p. 47, int. 5.
Berry, pp. 71–74 ; p. 75, int. 8 ; pp. 75–76, int. 11–17.
Bergen, p. 102, int. 17 ; p. 105, int. 15–20.

VALUE OF THE WESTERNPORT AND HER CARGO.

WESTERNPORT'S EVIDENCE.

Libel, p. 2.
Scudder, p. 13, int. 7, 8.
Bishop, pp. 35–40.
Bergen, p. 102, int. 13–15.

THE ISLAND CITY WAS DERELICT, IN THE SENSE OF THE LAW OF SALVAGE.

She lay in the open sea, by an insufficient anchor, surrounded by shoals, dismasted, without rudder, and had no one on board. She was deserted, abandoned, forsaken.

"Derelict," in the civil law, had an intense signification, meaning that the owner *renounced title*, so that the title was in the finder. The English Admiralty Courts at first adopted this use, but gradually abandoned it. Now, in the salvage law, *derelict* means

deserted or forsaken, with or without a hope of returning. The test is not the *hope*, but whether there is *a power of resuming actual possession at pleasure.* If not, it is "derelict," the title remaining in the owner, but a temporary right of occupancy for salvage, in the finder. In this case, it is doubtful if the crew of the Island City could have been compelled to return to her. And, certainly, their ability to return depended upon the weather, and whatever increased the peril to the bark, made their return less probable.

Amethyst, Davies, 21.
John Gilpin, Olcott, 78.
John Wurtz, Olcott, 470, 471.
Rowe v —— *brig*, 1 Mason, 373.
Sir Leoline Jenkins' Works, Vol. 1, p. 89, (cited in 1 Mason.)
Coromandel Swabez's Ad. R. 205.

In cases like this, the rule is to give one-half for all the salvage. To "make an equitable division between owner and salvor," (*John Wurtz*, Olcott, 470.) The rule is *flexible*, (*Rowe*, v. ——*brig*, 1 Mason, 373,) but it *is* a rule. Reasons for departing from it must appear.

Reasons for adhering to a *rule*, though arbitrary or artifical.

Rowe v ——*brig*, 1 Mason, 373.
Henry Ewbank, 1 Sumner, 411.

Cases of deserted vessels, in which the rule of one-half has been followed.

Rowe v ——*brig*, 1 Mason, 373.
Henry Ewbank, 1 Sumner, 400
Boston, 1 Sumner, 328.
Sprague v. *barrels flour*, 2 Story, 195.
Galaxy, 1 Bl. & Howl. 270.
John Wurtz, Olcott, 460.
L'Esperence, 1 Dods. 64.
Francis Mary, 2 Hagg. 89.
Elliotta, 2 Dods. 75.
Reliance, 2 Hagg. 90.
Eugene, 3 Hagg. 156.
Effort, 3 Hagg. 153.
Zwei Gebroder, 3 Hagg. 430.
Galt, 2 W. R. 70.
Nicolina, 2 W. R. 175
Britannia, 3 Hagg. 153.
Cases in notes to 3 Hagg. 430 & 156.

And where one-half has been given, the expenses of the salvors are sometimes taken out of the other.

Frances Mary, 2 Hagg. 90.
Reliance, 2 Hagg. 90, n.

In some cases, one-third is given, and in some more than one-half, as—

Waterloo, 1 Bl. & H. 128.
Cora, 4 Wash. 80.
Charles, Newb. 329.
Thetis, 2 Knapp, (Pr. C.) 410.
Youge Bastiaan, 5 Rob. 287.
Jubilee, 3 Hagg. 43.
Rising Sun, Ware 385.

In England, the rule not to exceed one-half is not applied to cases of Derelict.

Inca, Swabez's Ad. 371.

Cases where a small per centage, one-seventh, or one- tenth, is given, or a fixed sum, are cases where the crew are on board, or within reach, and the Salvors merely assist, and the service is joint. Cases of *co-operation*, differ essentially from cases of unmixed Salvage.

Reasons for a high rule of Salvage in this case:

1*st.* The vessel saved was deserted, or "derelict."

2*d.* The service was solely by the libellants. No question or doubt as to co-operating or contributing shares arises.

3*d.* The vessel saved was of great value.

4*th.* The vessel saved was in immediate peril, (*Emulous*, 1 Sumner, 207 "Delay is loss, etc.")

5*th.* The service was prompt and voluntary, and all compensation was contingent on success.

6*th.* It was entirely successful, when all others had failed.

7*th.* The property of salvors put at risk was very great, and the losses and risks of delay, &c. large.

The Westernport was insured only for $12,000, and her frieght was uninsured, and her bills of lading gave no leave to deviate. For salvage purposes, the vessel will be treated as uninsured. (*Deveron*, 1 Wm. R. 180.)

8*th.* The salving vessel was a steamer.

Raikes, 1 Hagg. 246, *London Merch.* 3 do. 401, *Perth*, do. 416. (Recognized in *Versailles*, 1 Curtis, 350.)

Gen. Palmer, 5 notes of cases, 159.

Spirit of the Age, Swabez's Ad. R. 286.

9*th*. The services were undertaken with known risk of getting nothing, and were attended with considerable peril and labor to the crew. (*Boston*, 1 Sumner, 328.)

10*th*. Chances of seasonable relief from other sources were small.

The damage to Libellants, by reason of collision of Westernport and Island City, detention, expenses incurred, and loss of freight which Westernport, while engaged in said salving service, would have earned in prosecuting the business in which she was then employed was more than $7,000.

WESTERNPORT'S EVIDENCE.

Berry, p. 73–75, int. 14, 77, int. 21.
Parker, p. 43, int. 12.
Bergen, p. 102, int. 17.
Bishop, p. 37–38, int. 11–20.
Answer of Claimants, p. 8.

WESTERNPORT'S EVIDENCE.

Alex. Baxter, suprà.
Sylvester Baxter, suprà.
Crowell, p. 148, int. 14.
Gardner, suprà.
Russell, suprà.

(The Westernport saw her because she was drawn off her course by a signal from a light boat; and the two other steamers were following the Westernport.)

Where a vessel has been saved, Courts of Admiralty do not speculate on the mere chances of her being seasonably seen and relieved by another vessel if the salving vessel had not seen her; or on the chances of her surviving perils by possible contingencies.

Henry Ewbank, 1 Sumner, p. 414.
Charles, Newb. 329.

Reasons for giving a liberal allowance to owners of the salving vessel (and to the master,) are well stated in the following cases.

Nath. Hooper, 3 Sumner, 579.
Boston, 1 Sumner, 323.
Hy. Ewbank, 1 Sumner, 424, 5, 6, 429.
Missouri's Cargo, Sprague's Dec. 268–71.
John Gilpin, Olcott, 88.
Spirit of the Age, Swabez's Ad. R. 286.
Barrels of Oil, Sprague's Dec. 93.

AS TO MISCONDUCT OF SALVORS.

The articles of clothing which were taken from the Island City by the men of the Westernport, were taken and used to protect them against the severity of the weather, and the other articles were taken on board the Westernport for safe keeping.

WESTERNPORT'S EVIDENCE.

Bishop, pp. 36–37, int. 9.
Parker, p. 43, int. 15.
Smith, pp. 48–49, int. 16.
Hall. p, 51, int. 16.
Doneley, p. 57, int. 16.
Halstead, p. 61, int. 16.
Burns, p. 68, int. 16.
Floyd, p. 69, int. 16.
Spandburgh, p. 71, int. 16.
Berry, p. 76, int. 15.
Bergen, p. 103, int. 22.

The men intended to return, and did return, the articles taken, and if any articles were not returned, it was by accident or negligence. There was no intention of any one belonging on board the Westernport to steal or embezzle any article.

WESTERNPORT'S EVIDENCE.

Parker, pp. 43–44, int. 16, 19.
Smith, p. 49, int. 18, 19,
Hall, p. 51, int. 17, 18, 19.
Burke, p. 55, int. 16, 18.

Doneley, p. 58, int. 17.
Halstead, p. 61, int. 17.
Burns, p. 68, int. 17, 19.
Floyd, p. 69, int. 17.
Spanburgh, p. 71, int. 17, 20.
Bergen, p. 103, int. 22, 23.

There is no evidence that any of the officers or men of the Westernport, except the mate, Mr. Parker, and the six men who first boarded her with him, took any article whatever from the Island City, (except a book taken to read by Burke, and afterwards lent to him by the owner,) and the articles taken by them were returned.

Burke, p. 55, int. 15, 21.

There is no evidence that any money was found on board the Island City by Mr. Parker, or any other person from the Westernport, except from the statement of Parker himself and the men who boarded the Island City with him; and that money was returned by him to Capt. Stevens.

Parker, p. 43, int. 16.
Berry, p. 76, int. 15.

The crew of the Island City made out their list of articles lost, and fixed the valuation of them, under the expectation that they were to be paid for the articles which they claimed to have lost, at the price they fixed upon them.

RESPONDENT'S EVIDENCE.

Emerson, p. 209, cross-int. 7.
Hill, p. 210, cross-int. 4.

The fact that certain articles left, or supposed to have been left, on board the Island City, by her officers and crew, were not found by them on their return, is not proof that the same were embezzled or stolen by the officers or crew of the Westernport.

The stealing or embezzlement charged in the Answer, is not to be presumed, but must be proved to have been done by the officers or crew of the Westernport, by positive testimony.

ADMISSIBILITY OF TESTIMONY ON THE SUBJECT OF EMBEZZLEMENT.

If the evidence of the witness is objected to, it can be excluded only on two grounds: 1st. that the witnesses are interested; 2d, that they are parties to the record.

I. So far as a salvor testifies to exculpate himself, he is interested. But so far as he testifies to exculpate orhers of the crew, he has no interest. For the amount he receives is not affected, either way, by the guilt or innocence of the other salvors. The gross amount of salvage is determined, and distributed, independently of this question; and the shares of guilty persons are forfeited not to the co-salvors, but to the owners of the salved vessel.

Missouri, 18 Law Rep. 46.
Blaireau, 2 Cr. 240.
Charles, Newberry, 326.
Boston, 1 Sumner, 328.

II. Being without interest, the objection that they are parties to the record is purely technical. It is met by the technical answer that they are not nominally parties, but the suit is brought by others for their benefit. If they are technically parties, the objection should not apply where they are parties by compulsion, entitled, but for a rule of court, to sue separately.

Conklin's Adm. 664. Dunlap's Pr. 239.

R. H. DANA, JR.
DAN'L W. GOOCH, } *For Libellants.*

Prague. Dec 93-

SUPREME COURT OF THE UNITED STATES.

HENRY B. CROMWELL & AL. *vs.* THE BARQUE "ISLAND CITY," AND CARGO.

BRIEF OF MR. B. R. CURTIS FOR THE CLAIMANTS AND APPELLEES.

This is a cause of salvage, in which one out of three sets of alleged salvors, have appealed from a decree of the Circuit Court for the District of Massachusetts.

Originally, three libels were filed.

The first libel was by the owners, officers and crew of the *Steamer R. B. Forbes;* the second was by the owners, officers and crew of the *Schooner Kensington;* the third was by the owners, officers and crew of the Steamer *Western Port;* and all were for services rendered in saving the barque "Island City," and cargo.

The testimony in each of the cases had been taken to be used in all of them, all parties being represented; and at the hearing in the Circuit Court, it appearing that there was but one complete salvage of the same vessel and cargo, through the separate exertions of all the alleged salvors, the three cases were heard together.

The Court decreed that the "Island City" and her cargo should pay the sum of $13,000 for all the services which contributed to their salvage. That of this amount, the owners, officers and crew of the R. B. Forbes were justly entitled to the sum of $5,200 ; those of the schooner Kensington to the sum of $3,300; that the residue, $4,500, is the proper salvage compensation which would be recoverable by the owners, officers and crew of the steamer "Western Port;" but that all that part of this salvage compensation, which would otherwise have belonged to the officers and crew of the "Western Port," was forfeited by their misconduct.

From this decree the owners, officers and crew of the "Western Port" appealed. The other sets of salvors abided by the decree, and the proportions of the salvage compensation awarded to them respectively, have been paid.

The material facts which are undisputed, or clearly proved, are as follows: The "Island City," bound for Boston, made Cape Cod in a snow storm on the 18th of January, 1857, and the master, finding he could not get by the Cape, kept away and anchored in the Vineyard Sound, about six miles from Bass River, at 4, P. M. At 10, P. M., finding his ground tackle would not hold, he cut away the masts, and brought up near the "Horse Shoe," at a place marked X on the chart, the buoy on the shoal bearing S. by W., distant about three

quarters of a mile. They lay there from this time, (at day light,) Monday, the 19th, till Wednesday, the 21st, at 7, P. M., when the schooner Kensington came out of Hyannis to assist them, approached the bark, and at the request of the master of the bark, took her in tow; but the wind was so light, it being nearly calm, that they had made but about eleven miles towards Hyannis Harbor, when the wind came ahead, and they anchored, and the schooner returned to Hyannis. The place where the bark was thus anchored, is marked on the chart, A.

When the schooner took the bark in tow, the master supposed he had one anchor left; but, on getting up the chain, it was found that both were gone, and another anchor which was on board was bent to the chains, and the bark was anchord and lay there, at A, until the Forbes took them in tow as is next stated.

The claimants admitted in their answer, that the schooner Kensington and her people made meritorious efforts to assist the bark, and are justly entitled to a suitable compensation for the attempt. The efforts made and the assistance rendered by the Kensington and her people are thus stated in the opinion of the Circuit Court, which accompanies this brief. (p. 13–15.)

"When the schooner hailed the bark, her master requested those on board the schooner to tow his vessel into Hyannis, and told them if they did so he presumed they would be paid. Hawsers were then got on board the bark, and her crew commenced heaving in the chain, and it was then discovered that the other anchor was also gone. How long the bark had lain without any anchor, does not appear. It was then nearly calm and the schooner at the request of the master of the bark took her in tow, and proceeded about three miles towards the harbor of Hyannis, and then at eleven o'clock at night bent another anchor to the chain and came to anchor on account of there being no wind. They remained at anchor till one o'clock in the morning, when finding that it was commencing to snow and that the wind had increased, they got the anchor up and proceeded about eight miles towards the harbor, but at four o'clock on Thursday morning were obliged to anchor again, on account of the severity of the weather and the ice. It was then a thick snow storm, according to the testimony of the master of the schooner, and the wind had increased to an eight or nine knot breeze. At seven o'clock they again got the anchor up, when the bark drifted astern and the hawser parted. Efforts were then made to make fast again, but without success, by reason of the ice and the roughness of the sea, and at eight o'clock the bark came to anchor about a mile to the southward of the Light-boat, where she lay when she was subsequently found by the steamer R. B Forbes, as before stated. She was first discovered from a steeple in Hyannis, on the 21st day of January, 1857, while she was lying dismasted and without any rudder in the south channel near the Horse Shoe. Nine men, officers and crew went out in the schooner and got the bark about eight o'clock in the evening of that day. Their efforts to get her into harbor were continued through the night at considerable hazard to the vessel and crew, and until eight o'clock the next morning, and they finally left

her anchored in four and a half fathoms of water with a hundred fathoms of chain out, where she rode out the storm till she was relieved by the first named steamer. When they left the bark they agreed with her master to telegraph to her owners and to return. On arriving at Hyannis they immediately sent a telegraphic despatch to the owners residing in Boston, according to their agreement, but were unable to return on account of the ice in the harbor and the severity of the weather.

In consequence of the intelligence thus communicated the owners sent the steamer R. B. Forbes to the relief of the bark, and she was found where she had been left by the officers and crew of the schooner. It is alleged in the Libel that the bark at the time she was first discovered, and when the schooner went to her assistance, was lying in the Vineyard Sound in a severe storm, in a helpless condition and in considerable danger of total loss of both vessel and all on board. On the part of the Respondents it is admitted that the Libellants in this case rendered a meritorious service, and that they were of very considerable assistance in placing the bark in a safer position, and also rendered valuable aid to the bark in communicating with her owners, and thus enabling them to despatch the steamer to bring her into port."

It must be admitted, in addition to the above, that the people of the Kensington acted with promptness and bravery in going to the assistance of the barque, under circumstances of difficulty and considerable danger.

In pursuance of the *employment*, through the telegraph to the owners at Boston, the Forbes, which was at Provincetown, went to the bark, took her in tow, on Saturday, the 24th day of January, at 3, P. M.; towed her till evening, and then anchored. On Sunday, the 25th, started again, at 4. A. M. Towed her till 12, M., and came to anchor by reason of the strength of the tide. At 5, P. M., started again, and towed her all night, but the latter part of the night was not able to make headway, and at sunrise, on Monday, the 26th, grounded on the Great Point, on the Island of Nantucket. After being aground about two hours they got off, and towed four hours, in which time they made but two and a half miles.

At 11, A. M., finding their coal was not sufficient to get the bark to Boston, they anchored her, and started for Provincetown, to get a supply of coal, intending to return and take the bark to Boston. On their way to Provincetown they fell in with the Light Boat, adrift, and about 2, P. M., took her in tow, and carried her into Provincetown, where they arrived at 9, P. M., of the same day, (Monday the 26th.) They spent Tuesday at Provincetown, obtaining supplies and coal. On Wednesday, the 28th, at 4, A. M., they left Provincetown, and after about four hours found the coal on board so unsuitable that it would be fruitless to attempt to complete the enterprise with *that* coal, and returned to Provincetown for better. They waited there during Thursday, the 29th, for the arrival of coal from Boston. On Friday, the 30th, the coal arrived, and they were occupied till 12, P. M., in taking a supply on board. At 12, P. M., Friday, the 30th, they again started for the bark,

reached her anchorage on Saturday, the 31st, at 8, A. M., but the Westernport having removed her the day previous, they did not find her. After searching and inquiring on that day, and learning she had been taken away, they went, on Sunday, the 1st of February, into Hyannis, and there found her in the possession of the Westernport's people.

The Forbes is a steam tow-boat, and these services were rendered by her upon the employment of the owners of the bark, and with the concurrence and assistance of her master, officers, and crew.

So far as respects the Forbes, it is a case of long continued and persevering effort, which does not seem to have been very well arranged and applied, but which would undoubtedly have been finally successful, if the Westernport had not needlessly, and as the claimants think, improperly interposed, and removed the bark from her anchorage.

Both the "Forbes" and the "Kensington" have acquiesced in the decree of the Circuit Court. This appeal is by the owners, officers and crew of the "Western Port."

This vessel being on a voyage from New York to Boston, had put into Tarpaulin Cove, a harbor on the south side of the island of Naushon, at the entrance of the Vineyard Sound, because the Sound was too full of ice to be safe. There was a telegraph from the main land to Tarpaulin Cove, and through the telegraph, the officers of the "Western Port" learned from the person in charge of the telegraph office at the Cove, that the "Forbes" had the barque "Island City" in tow in the Sound. Afterwards, that the "Forbes" was at Provincetown, taking in coal, and would leave immediately for the bark "Island City," *which was off Great Point;* that the "Forbes" was waiting for coal from Boston, on receipt of which she would leave again for the bark. (Pages 226–7.)

In short, before the "Westernport" left Tarpaulin Cove, her officers knew that the steamer "Forbes," a well known tug boat, largely employed in salvage enterprises, had charge of the barque; had anchored her off Great Point, and gone into Provincetown for coal to enable her to complete her salvage enterprise, and was about to return and complete it.

This evidence was not before the Circuit Court.

The "Western Port," as soon as the ice had left the Sound, sailed from Tarpaulin Cove, entered the Sound on her voyage to Boston, found the barque at anchor, succeeded after some hours, in getting up her anchor, took her in tow, and brought her into Hyannis.

The answer, (Record, p. 8, art. 2,) raises the question of the lawfulness of the possession of the Western Port.

1. The bark was not derelict when the Western Port approached her; for though no person was on board, her officers and crew had left to obtain coal and provisions, with the intention to return, and with well grounded expectation of finding her in safety and resuming her navigation.

In this every officer and seaman concurs, and their acts are in entire accordance with their testimony.

1. That they left to obtain coal and provisions.

Record, 134. Claimants' testimony. 175 (27 to 35x ints.) 180 (76–86x ints.) 193, (1x, 6x,) 212, (11 int.)

As to expectation of finding coal there. Record, p 134, 171.

2. That they intended and reasonably expected to return and resume her navigation.

Claimants' evidence ; master, Record, 170, (27–30 int.;) mate, 183, (12 ;) seamen, 195, (4,) 197, (4,) 199, (2x, 4x, 8x,) 200, (4,) 204, (4,) 206, (4,) 207, (3–5,) 209, (3–5,) 212, (13,) 135, (9, 10, 11,) 142, (34.)

The law is that a vessel so left is not derelict.

The Aguila, 1 C. Rob., 37.
Taylor *vs.* Prior, 1 Gal. R. 133.
The Emulous, 1 Sum, 209.
The Bee, Ware's R. 345.
The Dodge, Healey, 4 Wash. 651.

In the last case Judge Washington attributes great force to the actual return of the mate, who was in temporary command ; and the conduct of all concerned on board the Island City and the Forbes, is in accordance with what they now testify to have been their views and intentions.

They actually went to Provincetown, procured provisions and coal, as soon as practicable, and without delay returned to the place where the bark had been left.

Why should it be doubted, that what every man now swears to, was true—that they left for this temporary purpose, intending to do what they actually proceeded to do, and did?

Not only did they intend and expect to return, but their expectation of finding the bark where they left her, was a well grounded expectation, and but for the wrongful interference of the "Western Port," they would have found her and resumed her navigation.

1. Though the point C, where the bark was anchored, was an exposed place, it was, in many important particulars, favorable to safety.

Record, 139, (1,) 140, (3.)
146, (27–29,) 159, (28–31,) 161, (20x.)

2. The ice, which was the principal cause of danger, had broken up and gone out of the Sound, before the Western Port came to the bark, on Friday.

Record, 146, (30,) 150, (5,) 151, (11–14,) 155, (9,) 158, (8–20.)

Circumstances showing ice went out before the Western Port took the bark.

Weather moderated and raining, &c.

Record, 150, (5.)

The steamer Western Port would not have left Tarpaulin Cove on Friday morning, to come through the Sound, if her people had not previously received notice, by telegraph, from the Cape, that the Sound was open.

Record, 104, (8x.)

It is incredible that the account given by Gardner of the ice was true on Friday. See his account in Record, 19, (8,) 31, (12.)

Neither of the libellants speaks of any obstruction from ice on Friday, nor of its creating any difficulties in towing the bark. The Nantucket lightboat was found on *Friday* to *have then* drifted 15 miles out of place—doubtless she drifted Thursday, or Thursday night, when the ice went out.

3. The bark was securely anchored. No attempt has been made to support, even by the evidence of the libellants, the allegation of the libel, that the end of the chain was not made fast, and the contrary is clearly proved.

Record, 176, (33x–36x,) 183, (8–9,) 212, (10.)

And the libellants say they were four hours getting up the anchor.

With this anchor the bark had ridden out a gale of wind at Point A.

Record, 148, (15x,) 144, (7.)

4. The weight of the evidence is decided that the bark would have remained uninjured till the return of the Forbes.

Record, 178, (49x,) 135, (9, 10,) 136, (16–20,) 139, (1–3,) 146, (22–28,) 143, (5x.)

And this is the judgment of skilful persons, who had the best means of forming a correct opinion.

Record, 181, (84x,) 188, (39x.)

Forbes', 137, (30,) 147, (32,) 152, (15,) 153, (10x,) 159, (21,) 161, (19x.)

Indeed, the master of the Western Port does not venture to say she was in danger of going ashore before *Saturday night.*

Record 80, (36x.)

But the Forbes returned at 8, A. M., on Saturday.

The claimants insist:

1. That to entitle a party to salvage, not only must the service rendered be meritorious, but the *possession taken* must be lawful.

The Amelia, 1 Cranch, 1.
The Dodge, Healey, 4 Wash. 651.
The Barefoot, 1 Law and Eq., 661.

2. The *jus disponendi* which belongs to the owner, is not interfered with by any principle of admiralty law; and if a vessel be found, though with no one on board, under such circumstances that the libellants know, or ought to have known, their services were not desired, and they take possession, with intent to supplant the master and owners in giving her relief, they have no claim for compensation.

The Upnor, 2 Hag., 3.
The Barefoot, 1 Law and Eq., 661.
The India, 1 W. Rob. 408.
The Amethyst, Davies' R., 23.

3. The master of the Western Port knew that the Forbes, a well known steamer, whose business was to tow vessels, had charge of this bark, and had left her there for some temporary purpose, and was in the neighborhood and about to return to her; and his conduct evinces eagerness to secure a prize by taking advantage of the temporary absence of those in charge of the property.

Record, 79, (15x,) 15, (6x, 12x,) 16, (14x, 25x,) 104, 105, (8x–10x.)
Rowe's Dep'n, 226, 227.

The Court is always jealous to maintain the rights of those who have begun a salvage enterprise, and are prosecuting it in good faith. New comers are not allowed to interpose and dispossess them, for covetous and selfish ends. They must prove an absolute necessity for such interposition.

The Charlotte, 2 Hag. 361.
The Eugene Bourne, 3 Hag. 160.
The Effort, 3 Hag. 167–8.
The Glasgow Packet, 2 W. Rob. 306.

But if the Court should think that the Western Port *earned* salvage, the claimants insist that the enterprise was not attended with any considerable hazard to life or property, or even by severe or protracted efforts; and that it is not a case of great merit.

The whole time occupied was from 12, M., on Friday, the 30th of January, to 9, A. M., on Saturday, the 31st; about twenty-one hours; and four hours of this time they were at anchor.

Record, 42, (12,) 71 et seq., (2.)

The steamer was insured, with liberty to assist vessels in distress.

80, 81, (39x.)

There were other means of rescue provided by the owners, through the Forbes.

The Gen. Palmer, 5 Notes of Cas. 159.

As to the difficulty of boarding the barque, see

Patterson, Record, 158, (13–17.)

Enos, Record, 155, (14–18.)

The Western Port is said to have suffered some damage. The evidence of the libellants is not competent to prove the extent of this damage. And though it appears to have been repaired, 44, (2x,) no evidence is produced of *the cost of the repairs*.

At the time they went on board the Island City, (12, M., 30th January,) until they arrived at Hyannis, the wind and sea were not such as to render the enterprise difficult or hazardous.

The Forbes was at Provincetown, and on her way thence to the place of anchorage of the bark during this time, and those on board describe the wind and sea where they were. There is no reason to suppose they were materially different where the Westernport was.

Record, 171 (31,) 179 (60 x,) 137 (25–59,) 142 (31–33.)

The libellants' witness, Russell, who was at Nantucket, within view of the spot, confirms this. Record, 31 (11.) As do also the pilots on Nantucket, Enos, and Patterson, who were within sight of the bark.

Record, 155 (14–18,) 158 (8–20,) 160 (32–33.)

And what is quite decisive is, that Bunker, the keeper of the Sancoty Head Light, in the discharge of his official duty, *kept a record* of the force and direction of the wind, which confirms what these witnesses say.

Record, 150 (5,) 154 (13 x.)

Gardner's account, (Record 21, Int. 25,) differs from all these ; but he is not reliable. In the same narrative, he pretends to have seen the steamer take the Island City in tow, and to have watched them with his glass till they had got a considerable distance. When the fact was, the anchor of the Island City was not got up till about six o'clock, and they did not move her till about seven. And on the 30th of January, in a cloudy evening, this was long after dark.

Record 42, 43, 71 — 74, 79 (26 x — 27 x.)

He also tells a story about sending two boats' crews to the east end of the island, to get on board the bark, who found it impossible, on account of the surf, &c. Record 22, (28.) But Patterson, who was there to try to get on board the bark, says he was sent by no one, and there was no sea, only ice, to prevent them from getting off shore.

Record 158, (9–12) 160. 155, 156, (20–24.)

But whatever salvage, if any, may have been earned by the master, officers and crew of the Westernport, the claimants insist, was forfeited by embezzlement and by gross negligence in the custody and care of the property which came into their possession.

The law is clear, that *any* embezzlement works a forfeiture.

The Blairean, 2 Cranch, 240.
The Boston, 1 Sum. 339.
The Rising Sun, Ware's R. 379.

Not only so, but the law demands of salvors what Judge Story terms "*incorruptible vigilance,*" (1 Sum. 341–2,) and gross negligence, still more wilful carelessness, is cause of forfeiture.

The Duke of Manchester, 2 W. Rob. 56, 471.
The Barefoot, 1 Law and Eq. 661.
The Cape Packet, 3 W. Rob. 122.
The Glory, 2 Law and Eq. 551.

That actual embezzlement of the most cruel kind, robbing shipwrecked mariners, took place, and that extensively, and upon a plan of general plunder of their effects, is clearly proved.

Record, 171, 172 (33–38,) 192, 193 (9–10,) 184 (21,) 194, 195 (13x–17 x,) 196 (12,) 197, 198 (6–12,) 201 (13–16,) 204 (12,) 206 (1,) 207 (12,) 208 (5,) 210 (9,) 221 (68 x.)

By examining these depositions of the officers and crew, the court will see that locks were broken, chests forced open, clothing, money, and other articles carried away, and never returned.

The part that the mate, engineer, and clerk took in these transactions, appears by reference to the following places in the claimants' evidence.

Mate, 171, (33,) 179, (63x,) 181, (2–3,) 182, (3x,) 184, (23,) 190, (53–55,) 192, (12,) 194, 195, (16–17x,) 201, (9,) 201, (15,) 202, (1x, 4x,) 204, (11,) 205, (15,) 206, (9,) 207, (10,) 213, 214, (18–20.)

Engineer, 198, (13,) 199, 200, (9x,) 205, (13–15, 1x,) 206, 207, (9–10.)

Clerk, 184, (23,) 189, 190, (50x, 52x.)

The master not only took no measures to prevent this, though, as he admitted, he expected it, but did nothing effectual to remedy it, when informed of it.

Claimants' evidence, 184, (22,) 214, (21.)

It seems to be impossible that all the crew who did not actively participate in the plunder, should not have been aware that it had taken place. And it was the imperative duty of every man to have exerted himself to prevent the wrong and to have the property restored. It was culpable negligence and wilful default not to do it.

The testimony of the officers and crew on this subject is inadmissible and should be suppressed.

The Boston, 1. Sum. 339, 345.

The appellees submit:

I. That the barque was not derelict, and having been anchored by her own people and the people of the Forbes, who were employed by her owners to take charge of her, and they having left merely for the temporary purpose of obtaining coal, to enable them to complete the enterprise, and being about to return and resume their actual possession, and all these facts being known to the officers of the Western Port, their interposition was unlawful and did not entitle the Western Port to salvage.

II. There was one complete salvage service performed by the successive efforts of the different sets of salvors, and the Circuit Court properly allowed, as against the claimants, but one salvage compensation.

III. The compensation allowed was the large sum of $13,000. This was a liberal reward for all the services; and the amount to be allowed, and its distribution, being discretionary, should not be changed on appeal, "unless it manifestly appears that some important error has been committed."

The Sibyl, 4 Whea., 98.

Hobart *vs.* Drogan, 10 Pet., 108.

IV. There is no error in the distribution of the amount allowed the Western Port. The same proportion (one-third) was allowed in the Blairean (2 Cranch, 240,) to the salving vessel *and cargo;* and that proportion has been adopted in many other cases. Mr. Justice Story says, in the case of the ship Henry Ewbank and cargo, (1 Sum., 426-8,) one-third is the proportion habitually adopted, and to induce a departure from it very peculiar and pressing circumstances must be shown; and he refers to many cases in support of his position. In this case there are no such peculiar or pressing circumstances. The Western Port was not subjected to any considerable danger, or detention in her voyage, *and the owners of her cargo have waived their claims for salvage.*

V. The officers and crew having engaged in a systematic and general pillage of the money, clothing and effects found by them on board the salved ship, and such of them as did not actively participate therein having connived and consented thereto, their shares were lawfully and justly forfeited.

Grier

67 of 155 c 1861

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Rule for attorneys - Set aside

Hacket in proper pers 11-15

SUPREME COURT OF THE UNITED STATES.

No. ~~206~~. ~~###~~.67.

FERDINAND N. CLARK, APP'T,

vs.

WILLIAM H. Y. HACKETT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW HAMPSHIRE.

G. S. Gideon, Printer, 511 Ninth street, Washington.

470

Nelson

affidavits herewith filed, they caused a survey to be made of the said tract of land, and ascertained the same to be also bounded as follows: Beginning at a stone at the northwest corner of the survey be made for the representatives of James McKay, which is the northeast corner of this tract; thence running north seventy-five degrees west, one hundred and twelve chains and forty-one links, to a stone; thence south seventeen degrees fifty minutes east twenty-one chains twenty-three links, to the beginning, as the same is represented upon the foregoing plat of survey, containing two hundred and eighty arpents. The undersigned then proceeded to locate the portion of said land to which the said Charles Mullikin is entitled, according to the judgment of the said circuit court, being nine arpents and eighty-one hundredths of an arpent; and in order to locate the same was to give the said Mullikin a fair average of all advantages of position and soil, they began upon the northern line of said tract, upon Chouteau avenue, forty-eight chains sixty-four links west of the northeast corner of the tract; thence they ran south fifteen degrees west, twenty-*on* chains nineteen links to a stake in the southern line of the tract; thence with said southern line north seventy-five degrees west three chains ninety-three links to the beginning, containing nine arpents and eighty-one hundredths, which said partition thus described the undersigned allotted to the said Charles Mullikin.

The undersigned proceeded to divide the remaining portion of said tract among the other parties mentioned in the order of said court, quantity and quality relatively considered, and they assigned to Joab Toney the quantity of sixty arpents, next east of and adjoining to the portion assigned to Mullikin, and which is bounded on the east by a line running from the northern to the southern line of said tract, parallel to the eastern boundary of Mullikin's portion, and at the distance of twenty-four chains thirteen links from the said Mullikin's eastern line. The undersigned next allotted to said Elias T. Lanham the quantity of eighteen arpents next east of and adjoining to said Toney's portion, and bounded on the east by a line running from the northern to the southern line of the tract, parallel to said Toney's eastern boundary, and at the distance therefrom of seven chains twenty links. The undersigned next allotted to Enoch E. Marsh the quantity *on* twenty-one and a half arpents lying next east of and adjoining the portion of said Lanham, and bounded on the east by a line running from the northern to the southern line of the tract, parallel to the eastern boundary of said Lanham, and at the distance therefrom of eight chains and sixty links. The undersigned next allotted to Benjamin W. Ayres the quantity of seventy arpents and a half, lying east of the portion of said Marsh, and between his eastern line and the eastern line of the tract, as designated on the above plat. The undersigned next allotted to the heirs of Zachariah Wilson the quantity of sixty ar-

pents, next west of and adjoining the land of said Mullikin, and bounded on the west by a line running from the northern to the southern line of the tract paralliel to the western boundary of said Mullikin's portion, and at the distance therefrom of twenty-four chains thirteen links. The undersigned next allotted to said Robert Duncan the quantity of ninety arpens and nineteen hundredths of an arpen, lying west of and adjoining the portion of said Wilson's heirs, and between the western boundary of said Wilson's heirs and the western boundary of the tract as shown on the above plat. All which is respectfully submitted.

Witness our hands this twentieth day of March, 1838.

WM. RUSSELL,
TH. T. COHEN,
JAMES CLEMENS, JR.,
Commissioners.

[*For plat see original, page* 148.]

The above tract of 280 arpents, confirmed to Calvin Adams, under Motard, situated in the Cul-de-Sac, and heretofore laid off by me, agreeably to instructions from the city corporation, was subdivided into the above seven lots of ground, strictly according to the different quantities pointed out for each lot in the instructions furnished me and signed by Messrs. Wm. Russell, Thos. Cohen and James Clemens, commissioners.

STATE OF MISSOURI,
County of Saint Louis.

Be it remembered that before me, Joseph W. Walsh, a justice of the peace in and for said county, personally came William Russell, Thomas Cohen and James Clemens, junior, commissioners, who are all personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

J. W. WALSH, *Justice.*

And afterwards, on the day of , the following further proceedings were had:

ROBERT DUNCAN vs. ELIAS T. LANHAM, ENOCH C. MARSH, Benjamin W. Ayers, Joab Toney, Charles Mullikin, and the unknown heirs of Zachariah Wilson.	In Partition.

Now, at this day, come the said commissioners, to wit: William Russell, Thomas P. Cohen and James Clemens, jr., and file their report, acknowledged according to law, specified therein the manner of executing their trust and describing the lands divided, and share as allotted to each party, with the quantity of each share, the boundaries, courses and distances; and no cause to the contrary being shown, the said report and the petition thereby made are confirmed and approved by the court as *fur in* and effectual forever. And it is further ordered by the court that the costs of this proceeding be taxed against the several parties according to their respective rights in the premises.

STATE OF MISSOURI,
County of Saint Louis.

I, Stephen Rice, clerk of the circuit court for and within the county aforesaid, certify the foregoing to be a full and complete transcript of the record and proceeding in the above entitled cause, as fully as the same remains of record in my office.

In testimony whereof I hereto set my hand and affix
[L. S.] the seal of said court, at office in the city of Saint Louis, this 12th day of October, 1858.

STEPHEN RICE, *Clerk.*

Chs. Mullikin's Last Will, &c.

In the name of God. Amen.

I, Charles Mullikin, of the city of St. Louis, and State of Missouri, being in perfect health of body and of sound and disposing mind, memory and understanding, considering the certainty of *deth* and the uncertainty of the time thereof, and being desirous to settle my wordly affairs and thereby be the better prepared to leave this world when it shall please God to call me home, do, therefore, make and publish this, my last will and testament, in the manner and form following, that is to say:

First, and principally, I commit my soul into the hands of the Almighty God who gave it; my body to the earth, to be decently buried at the discretion of my friends without any pomp or parade, and after my debts *is* paid, if any there be, I devise and be*queth* as follows:

I give unto my dear and beloved wife, Catherine, my dwelling-house, containing twenty-eight feet front on Fifth street, *runing* back one hundred thirty-five feet, which I value at ten thousand dollars. I give unto my eldest daughter, Virginia, my house and lot on Second street, being No. (17), twenty feet six inches front on Second street, by one hundred and fifty feet to an alley, which I value at six thousand dollars; also the east portion of my old dwelling-house on Elm street, fronting twenty-one feet on Elm and running back one hundred and twenty-eight feet,

which I value at four thousand dollars, the two making the amount of nine thousand dollars, and for the purpose of making her equal I give her one thousand dollars cash. I give and be*queth* unto my youngest daughter, Octavia, my house at the corner of Second and Elm streets, being about twenty-four feet front on Elm street, running back on Second street sixty-seven feet, being the same, more or less, which I value at four thousand dollars; also one of my three-story brick buildings on Elm street, being No. (35), fronting on Elm street about twenty-four feet, and running back sixty-seven feet, which I value at five thousand dollars; to make her equal I give to her one thousand dollars cash. I give unto my eldest son, Napoleon, my three-story brick house on Elm street, adjoining the last described, fronting on Elm street twenty-four feet, running back sixty-seven feet, being tenement No. (33), which I value at five thousand dollars; also my two-story brick on Elm street, fronting twenty-four feet, running back sixty-seven feet, which I value at four thousand dollars, and to make him equal to the rest he is to receive credit for one thousand dollars which I have already given him. I give unto my son Jerome my frame house fronting on Fifth street twenty-eight feet, running back one hundred and thirty-five feet, which I value at three thousand dollars; also a part of my old brick house on Elm street, with a front of seventeen feet, running back one hundred and twenty-eight feet, which I value at three thousand dollars; likewise I give my two-story brick house on Fourth street, on land leased from the *Choal*, twenty-five feet five inches on 4th street, by ninety-seven feet deep, which I value at two thousand dollars, and to make him equal he is to receive a credit of two thousand dollars cash he has already received. I also give unto my wife and four children a tract of land about five miles northwest from the city, containing about seventy-six acres, which is to be divided in five equal parts, beginning on the east; the first lot for my wife, and continuing west give each one-fifth, according to *there* respec*tative* ages. I give, devise, and *bequeth* all the rest and residue of my estate, both real and personal, to be equally divided amongst my dear wife and my daughters Virginia J. Mullikin and Octavia E. Mullikin, in equal portions, share and share alike. The property bequeathed as above to my dear wife, should she *dye* without *isue*, shall revert back to my two sons and two daughters, to be equally divided amongst them, share and portion alike, and that portion bequeathed to my two daughters, of my estate, is only to them and the heirs of their *bodys*, and should they *dye* without *isue*, *there* portion of the estate reverts back to the other brothers and sister, to be divided amongst them. I do appoint my two sons as *garduns* to *there* two sisters, to manage their portions of the estate, to see that they are well educated and brought up in a virtu*ose* and a reli*gish* manner, and pay all expences for the same out of *there* portion of

the estate until they arrive at womanhood, at which time, at their request, to hand over to each of them the full amount of *there* portions of the estate, together with its income, after deducting the expen*ces* of education and other *nessary* expenses for their main*tain*ance. And lastly, do hereby constitute and appoint my two sons, Napoleon B. and Jerome B. Mullikin, to be my sole executors of this, my last will and testament, revoking and annulling all former wills by me heretofore made, ratifying and confirming this, and none other, to be my last will and testament.

In testimony whereof, I have hereunto set my hand and affixed my seal this 4th day of July, in the year of our Lord one thousand eight hundred and forty-nine.

CHARLES MULLIKIN. [SEAL]

The house and lot be*queth*ed to Virginia on 2d street is in block No. 34, and the one on Elm street is in block No. (35), and the valuation of the two is ten thousand dollars in *sted* of nine, which will make her equal without a thousand dollars cash. That deeded and be*queth*ed to my *three other three* children, on Elm street, is in block No. (35.)

C. MULLIKIN. [SEAL.]

In presence of—
GEORGE B. FIELD,
THORNTON D. MURPHY,
THOMAS REYBURN.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this first day of July, in the year of our Lord one thousand eight hundred and fifty-one, before me, William F. Ferguson, clerk of the probate court of the county of Saint Louis, personally came Thornton D. Murphy, who being by me duly sworn on his oath, saith that he did not see Charles Mullikin sign his name to the preceding instrument in writing, but heard said Mullikin publish and declare the same to be his last will and testament. Said Mullikin handed the said instrument to witness, desiring him to subscribe the same as a witness, which he did in the presence of said Mullikin, and of George B. Field, the other witness; and at the time of executing and publishing said will, he, said Charles Mullikin, was of sound and disposing mind, to the best of his knowledge and belief. Said will was published to and subscribed by him, on Wednesday, the 25, or Thursday last, the 26th day of June, 1851.

THORNTON D. MURPHY.

Sworn to and subscribed before me, this first day of July, 1851.
WILLIAM F. FERGUSON,
Clerk.

And on this first day of July, in the year one thousand eight hundred and fifty-one, personally appeared George B. Field, who being by me duly sworn on his oath, saith that at the request of Charles Mullikin, he subscribed his name to the preceding instrument in writing as a witness thereto, on Wednesday night last, the twenty-fifth ultimo, about eleven o'clock, as did Thornton D. Murphy, the other witness. The said Charles Mullikin declared to us that he had signed his name to said instrument, and published and declared the same to be his last will and testament, and at the time of so doing, he, said Mullikin, was of sound and disposing mind, to the best of my knowledge and belief.

GEORGE B. FIELD.

Sworn to and subscribed before me, this 1st July, 1851.

PETER FERGUSON,
Judge of Probate.

I, Peter Ferguson, judge of probate of the county of Saint Louis, having examined the foregoing instrument in writing, purporting to be the last will and testament of Charles Mullikin, and the testimony of Thornton D. Murphy and George B. Field, subscribing witness thereto, consider that said instrument is duly proved to be the last will and testament of Charles Mullikin, deceased.

Witness my hand, at the county aforesaid, this fifth day of July, one thousand eight hundred and fifty-one.

PETER FERGUSON,
Judge of Probate.

STATE OF MISSOURI,
County of St. Louis, ss.

I, William F. Ferguson, clerk of the probate court of the county of Saint Louis, in the State of Missouri, certify that the foregoing is a true copy of the last will and testament of Charles Mullikin, deceased, and the probate thereof, as the same now remains of record in the office of the judge of probate, of the county of Saint Louis, in the Record of Letters and Wills, book D, page 270 and following.

In testimony whereof, I hereto set my hand and affix the seal of the probate court of the county of Saint Louis, at office in [L. S.] said county, this eighth day of February, in the year of our Lord one thousand eight hundred and fifty-four.

WILLIAM F. FERGUSON,
Clerk.

Defendants' Depositions.

The following deposition of Wm. B. Hayden was taken before Richard B. Owen, clerk of the circuit court of the United States, fifth judicial circuit and southern district of Alabama, at the city

of Mobile, in said district, on the 23d day of September, A. D. 1858, viz:

Wm. B. Hayden's Deposition.

And the said witness, who is personally known to me, being of sound mind and lawful age, and having been by me first sworn upon the holy Evangelists to speak the truth, the whole truth, and nothing but the truth in said cause, did thereupon depose and say as follows, to wit:

I know those of the defendants in this cause who are the children of Charles Mullikin, dec'd; I don't know the complainant, nor the other defendants; I knew Elijah Hayden; he was my father; I also knew Charles Mullikin, who was related to me; I knew James Adams, also; I knew the Motard tract of land; it lies directly south of the Chouteau mill tract, and I am informed is now embraced in what is called Toney's addition, in the city of St. Louis; my father once owned an undivided interest in said tract of land, which interest he purchased in 1831, from James Adams; Charles Mullikin also had an interest in said tract of land, and my impression is, that he purchased from David Musick in the same year with my father; their interests were undivided interests, and my father immediately after his purchase took possession of the land for his own account, and after Mullikin purchased his interest, he came to my father and requested him to hold possession of his interest for him, and to keep depredators off. My father took possession immediately after the purchase, in 1831, and kept possession for himself and for Mullikin, as owners of the property, until he sold to Toney. Mullikin frequently spoke with my father about the land and their ownership, and it was well understood between them that my father held it for himself and Mullikin. The families were intimate, and often visited one another. My father's possession terminated at the time he sold to Joab Toney, and since then I have had no knowledge as to who held the further possession of Mullikin's interest. I was an inmate of my father's family, and heard the communication as to the ownership of the land, about which I have above spoken, and consequently know them of my own knowledge.

W. B. HAYDEN.

The following depositions of F. Frey, Caspar Kittenreiner, and S Blood were taken at the office of John R. Shepley, in the city of St. Louis, Missouri, on the 19th and 20th days of October, A. D. 1858, before Charles P. Johnson, a notary public within and for the county of St. Louis and State aforesaid, viz:

Fred. Frey's Deposition.

Frederick Frey, of lawful age, being duly sworn and examined upon oath, deposeth and saith:

I live in the city of St. Louis, on the south side of Chouteau avenue, bounded west by Compton avenue, being the same land formerly owned by Charles Mullikin in the Motard tract. I rent from the executors of Charles Mulligan. Next April I will have been their tenant four years on that tract.

F. FREY.

Not being able to complete the taking of said depositions, by reason of the lateness of the hour, I adjourn the further taking of the same until to-morrow, as agreed to by the respective parties to the suit in which said depositions are to be read.

Pursuant to adjournment, as above stated, on the 20th day of October, A. D. 1858, between the hours of eight o'clock in the forenoon and two o'clock in the afternoon, at the same place as aforementioned, I continued the taking of said depositions, as follows:

C. Kittenreiner's Deposition.

Caspar Kittenreiner, of lawful age, being duly sworn, upon oath deposeth and saith:

I live at the corner of Parke and Compton avenue, in the city of St. Louis, State of Missouri, and have lived there for the last fifteen years. I know the piece of land, about ten arpens, bounded north by Chouteau avenue and west by Compton avenue, and now occupied by Fry. I know that piece of land since eighteen hundred and forty-three. At that time Mr. Clark occupied that land. He told me he leased the land from Charles Mulligan. (The attorney for the plaintiff objects to the latter part of the immediately preceding answer, as being irrelevant, illegal, and incompetent.) Mr. Clark remained on this land about two years after 1843. It was next occupied, after Mr. Clark, by a German whose name I have forgotten. This German occupied it one year. Another German occupied it another year, immediately thereafter, whose name I have also forgotten. These two Germans leased it from Mr. Mulligan. (The latter part of last answer objected to by attorney for plaintiff, as being irrelevant, illegal, and incompetent.) A man by the name of Ritter next occupied it. I never had any conversation with him as to whom he rented from. It was next rented by Theodosky, a Pole, who rented from Mr. Mulligan. (Objected to (the answer) by attorney for plaintiff, as being irrelevant, illegal, and incompetent.) After Theodosky, it was rented by an Irishman named Norris, who rented also from Mulligan. (Objected to by attorney for the plaintiff, as being irrelevant, illegal, and incompetent.) Before Norris, and immediately after Theodosky, it was rented by another man, whose name I have forgotten, and who also rented from Mulligan. (Objected by attorney for plaintiff, as being irrelevant, illegal, and competent.) After Norris succeeded Mr. Fry, the present occupier and tenant, sometimes

it was vacant, but I could not say how long. One year I know it was vacant, but as to any longer or other time I don't know. I cannot tell what year it was vacant. In 1843 there was a house on this land. About two years before that year I passed this place and saw them there erecting the house. The ground was fenced in before 1843, I don't know how long, and has continued fenced ever since.

KUSYAR KITTURNIENER.

S. Blood's Deposition.

Sullivan Blood, of lawful age, being duly sworn, upon oath deposeth and saith:

I live in the city of St. Louis; I come here in 1817; I know the Motard tract. There were no actual sales of land in 1831 in that tract, to my knowledge. My estimate as to the value of said land would be rather a guess than otherwise. I should suppose it would not have brought more than five dollars an arpent. It would not have brought ten dollars. I know the piece of ground allotted to Mr. Mulligan, bounded north by Chouteau avenue and west by Compton avenue. This land is worth, at present, from $1,000 to $1,500 per arpent. This is my judgment, and perhaps a low estimate.

S. BLOOD.

J. Toney re-examined.

The following deposition of Joab Toney was taken at the clerk's office of the United States circuit court in the city and county of St. Louis and State of Missouri, on the 21st day of October, A. D. 1858, before Charles P. Johnson, notary public within and for the county aforesaid, viz:

Joab Toney, of lawful age, being duly sworn and examined, upon oath deposeth and saith:

I have been already examined in this case. I purchased some of the Motard tract—the undivided one-third of two hundred and eighty arpents. I purchased the same in 1831 or 1832. I gave three hundred dollars for the above portion. I know the part, in the Motard tract, of about ten arpents, bounded north by Chouteau and west by Compton avenue, and claimed by the heirs of Mullikin. There is a house on this land. It was built by Charles Mullikin. I think the house was put up between the years 1838 and 1840. He put up a fence before the house was erected. Mr. Mullikin was on the land most every day after the running of the lines for the commissioners in partition, until the house was built. I should suppose that the above named land would sell at between three and four thousand dollars an arpent. I went into the possession of the Motard tract in the year 1832. Elijah Hayden was in possession immediately preceding me. I took possession the

same day he left. I think James Adams occupied it before Mr. Hayden. I think there was a man named Robbins on it before Hayden, but do not know from whom he claimed. I have lived on the tract ever since 1832. I purchased some little time before I went there, but as soon as Mr. Hayden left I went into possession. I occupied it as an undivided interest until the partition was made; then went into the portion allotted to me, and have held it ever since.

Cross-examination.

I went in claiming an undivided one-third in possession. The fence was built, I think, between the years 1838 and 1840, and the house between 1840 and 1843. The fence was built, I think, a very short time after the partition. I will not positively state that it was built in 1838, and I would not state positively that it was not built in the year 1839. I purchased of Mr. Hayden, and he assigned the bonds to me, and I went in under that written contract.

JOAB TONEY.

MISSOURI DISTRICTS, *sct.*

I, Benjamin F. Hickman, clerk of the circuit court of the United States for the districts of Missouri, certify the foregoing 163 pages to contain a true and complete transcript of the record, pleadings, and proceedings had in a suit in chancery, decided in our said court, wherein Richard Pindell was complainant against Napoleon B. Mullikin et al., defendants, as fully as the same remain on file and of record in my said office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, this 3d day of December, A. D. 1858.

[L. S.]

BEN. F. HICKMAN, *Clerk.*

Filed 3d November, 1860.